Supreme Court, U. S.
FILED
OCT 21 1974
MICHAEL RODAK, JR., CLERK

APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1475

HARRIS COUNTY COMMISSIONERS COURT, ET AL.,

Appellants

v.

RICHARD E. MOORE, ET AL.,

Appellees

APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Alpha Law Brief Co., One Main Plaza, No. 1 Main St., Houston, Texas 77002

Filed April 3, 1974

Probable Jurisdiction Noted June 3, 1974

LIST OF CONTENTS

	Page
Docket Entries	1
Stipulation of the Parties	8
Exhibit 10 to the Stipulation	21
Exhibit 11 to the Stipulation	32
Deposition Testimony:	
County Commissioner Robert Y. Eckels	40
County Commissioner Tom Bass	53
County Judge Bill Elliott	84
County Commissioner Jamie H. Bray	96
Judgment Order of the District Court	104
Opinion of the District Court	106

CLERK'S DOCKET ENTRIES

THREE JUDGE COURT REQUESTED
CIVIL DOCKET
UNITED STATES DISTRICT COURT

CONSOLIDATED WITH C.A. 73-H-1033
TO BE CARRIED UNDER C.A. 73-H-993

73 - H - 9

Jury demand date:

Three Judge Court
John V. [illegible]
Carl O. Rue
Thomas Goe

D. C. Form No. 106a Rev.

TITLE OF CASE	ATTORNEYS
RICHARD E. MOORE, J. C. BOLTON, VERNON G. DOERING, J.W. MAHAN, GENE ZABOROSKI, and JOHN HOWE BOYNTON, On His Own Behalf and On Behalf of Every Resident Citizen of the Former Justice of the Peace Precinct NOS. 5, 6 & 7 of Harris County, Texas VS HARRIS COUNTY COMMISSIONERS COURT, WILLIAM ELLIOTT, Individ. and as County Judge of Harris County E.A. LYONS, Individ. and as a Member of the Harris Co. Commissioners Court ROBERT ECKELS, Individ. and as a Member of the Harris Co. Commissioners Court JAMIE BRAY, Individ. and as a Member of the Harris Co. Commissioners Court TOM BASS, Individ. and as a Member of the Harris Co. Commissioners Court	For plaintiff: Virgil H. Barfield 500 Houston Bar Center Bldg. 723 Main Street Houston, Texas 77002 225 Gene Zaboroski: C. Anthony Friloux, Jr. EDDINGTON & FRILOUX 1215 First National Life Bldg. Houston, Texas 77002 227 For defendant: Edward J. Landry, Sr. Asst. Co. Harris County Courthouse Houston, Texas 77002 228

STATISTICAL RECORD	CLERK			DATE	NAME OR RECEIPT NO.	REC.		DISB.
J.S. 5 mailed	Clerk			7-13-73	Barfield	15	00	15 00
				7-13-73	C.D. 1-2			
J.S. 6 mailed	Marshal			7-20-73	B. Ref'd.	15	00	
				8-1-73	C.D. 1-4			15 00
Basis of Action: Constitutionality of state statutes concerning redistricting Injunctive relief	Docket fee			9-7-74	Harris Co. Notice Appeal	5	00	
	Witness fees			9-13-74	C.D. 1-25			5 00
Action arose at:	Depositions			9-18-74	Harris Co. Amend. Notice	5	00	
				9-19-74	C.D. 1-27			5 00

73-H-993 THREE JUDGE COURT REQUESTED Page Two

JOHN V. SINGLETON,

DATE	PROCEEDINGS	Date Order Judgment
7-13-73	Pltf. ORIGINAL COMPLAINT with request for Temporary Restraining Order, filed. SUMMONS not issued due to no service copies.	79
7-20-73	SUMMONS issued on deft. (5 - each issued "Individ. and as member of Harris County Commissioners' Court...")	
7-25-73	RETURN OF SUMMONS on the following, served 7-24-73:	
	Robert Eckels, filed.	
	William Elliott, filed.	
	E. A. Lyons, filed.	
	Tom Bass, filed.	
7-25-73	(JVS) ORAL ORDER to consolidate C.A. 73-H-1033 with C.A. 73-H-993 entered. Case will be carried under C.A. 73-H-993 and all future pleadings will be filed in C.A. 73-H-993. Parties ntfd. rm.	
7-26-73	RETURN OF SUMMONS on deft. Tom Bass, served 7-25-73, filed.	
8-3-73	Pltf. BRIEF, filed.	108
	(JVS) HEARING ON APPLICATION FOR TRO: Testimony of witnesses. Court denies TRO.	
8-9-73	RETURN OF SUMMONS on the following, served 8-2-73, filed.:	
	Jamie Bray.	
	William Elliott.	
	Harris County Commissioners Court.	
	Jamie Bray.	
8-17-73	BRIEF OF PLAINTIFFS, filed.	133
8-17-73	(JRB) ORDER, setting up a three judge court to afford opportunity to brief and argue all questions either preliminarily or on the trial of the merits, or otherwise, as that Court thinks. Judges designated: Requesting Judge, Honorable John V. Singleton, Jr., for the Southern District of Texas; District Judge, Honorable Carl Bue, for the Southern District of Texas; Circuit Judge, Honorable Thomas G. Gee, filed. Parties Ntfd. dw	138
8-28-73	Pltf. (CA 73-H-1033) FIRST AMENDED COMPLAINT FOR DECLARATORY RELIEF AND INJUNCTION, filed. SUMMONS issued on deft. (4).	140
9-6-73	RETURN OF SUMMONS on the following, served 8-31-73, filed:	
	Harris County Commissioners Court as an entity	
	Tom Bass, Harris County Commissioner.	
	Bill Elliott, County Judge.	
9-7-73	Deft. MOTION FOR DISSOLUTION OF THREE-JUDGE PANEL AND MOTION TO DISMISS, filed. N/D 9-17-73.	161

Page Two

73-H-993

JOHN V. SINGLETON, Jr.

D. C. 1164 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Order Judgment
9-13-73	Pltf. MOTION FOR DEFAULT JUDGMENT, filed. N/D 10-15-73 by clerk.	168
9/17/73	Pltfs' FIRST AMENDED COMPLAINT for Declaratory Relief, filed.	171
9-17-73	In the Moore case, leave is granted to file an amended complaint. In these consolidated cases the attorneys will prepare and submit for filing on or before 5:00 P.M. October 1, 1973, stipulated facts. If there are any disputed facts within this same period of time the attorneys will take, have transcribed, and file depositions and/or answers to written interrogatories relating to any unresolved or unstipulated facts. On or before October 8, 1973 at 5:00 P.M. the attorneys will prepare and file briefs supporting not only their respective contentions on the merits of the case, but also briefs relating to whether or not this is properly a case for determination by a three-judge court. A hearing will be held before the three-judge court on November 15, 1973 at 2:00 P.M. at which hearing the attorneys will be prepared to present oral arguments presenting their respective legal positions. JVSJR. Parties ntfd. rm.	
9-28-73	Agreed Motion for Extension of Time to Complete Discovery, filed.	196
9-28-73	(JVS) ORDER, filed, granting agreed motion for extension of time to complete discovery and submit stipulations of facts to 10-8-73, 5:00 p.m.; submit briefs to 10-15-73. Parties ntfd. mg	199
9/28/73	Return of Summons on Jamie Bray, served 9/18/73, filed.	
10/5/73	Pltf., G Zaborski's FIRST AMENDED COMPLAINT for injunctive relief, declaratory relief, civil damages and attorney's fees, filed.	200
10/9/73	DEPOSITION of Walter H. Rankin, filed.	
10/9/73	DEPOSITION of Robert Y. Eckels, filed.	
10/9/73	DEPOSITION of Tom Bass, filed.	
10/9/73	DEPOSITION of Blackie Neeley, filed.	
10/9/73	DEPOSITION of Judge Bill Elliott, filed.	
10/9/73	DEPOSITION of Sheriff Jack Heard, Major Tom Pickens and Captain Ellis Ebarb, filed.	
10/9/73	STIPULATION between plaintiffs and defts Elliott, Lyons, Eckels, Bray and Bass, filed.(w/exhibits)	215
10/9/73	Agreed MOTION to Continue Discovery, extending time for discovery, until November 8, 1973, filed.	252
10/15/73	Plaintiff's BRIEF, filed.	257
10/15/73	Defts' BRIEF in support of Motion to Dissolve Three Judge Panel and Motion to Dismiss, filed.	261
10/15/73	Plaintiff's FIRST AMENDED BRIEF, filed.	292
10/16/73	Plaintiff Zaborski's BRIEF in support of Jurisdiction, filed.	320
10-18-73	DEPOSITION of Blackie Neeley, filed.	

73-H- 993

JOHN V. SINGLETON, JR.

Page No. 2

DATE	PROCEEDINGS	Date Order or Judgment
11/7/73	JOINT STIPULATION, filed. Stipulating that all evidence, including pretrial discovery evidence, that is admitted by the Court in CA 73-H-993 will also be simultaneously admitted in evidence in CA 73-H-1033.	351
11/12/73	DEPOSITION of Jamie H. Bray, filed.	
12/18/73	Pltf. Zaborcski's SUPPLEMENTAL BRIEF IN SUPPORT OF JURISDICTION, filed.	353
1-30-74	(JVS)(TG)(COB) ORAL ARGUMENT ON LEGAL POSITION: Argument of counsel. Court takes case under advisement.	
1-30-74	(JVS)(TG)COB) ORDER, filed. Court has jurisdiction; the Texas statute Article 2351½ is facially unconstitutional and the order of the Commissioners Court of Harris County, Texas, of June 28, 1973, complained of herein issued pursuant thereto is permanently enjoined. An opinion of the court will follow. Parties ntfd. nm.	363
2-1-74	Defts' MOTION FOR STAY OF JUDGMENT AND SUPERSEDEAS, filed.	365
2-1-74	(JVS) ORDER, filed, Defts Motion for a stay pending its appeal to the Supreme Court is denied. Parties ntfd. jab	368
2-4 74	Defts' Notice of Appeal, filed. (To Supreme Court)	369
2-8-74	(JVS, TGG, COB) OPINION, filed. Pltfs are entitled to serve the terms to which they were elected. Insofar only as Article 2351-1/2, Texas Revised Civil Statutes mandates otherwise, it is unconstitutional. Defts' order of January 30, 1973, undertaking to appoint other persons to pltfs' offices and to prevent pltfs from carrying out their duties and receiving emoluments of their offices during the term to which they were elected, is likewise invalid. Parties ntfd. jab	372
2-8-74	Certified copy of Order of Supreme Court of the U.S. GRANTING Appellant's application for Stay of Dist. Court's Order of 1/30/74 pending further order of the Supreme Court, rec'd & filed.	
3-7-74	Deft's Amended Notice of Appeal to Supreme Court, filed.	376
4-1-74	Reporter's Transcript of Proceedings, filed. Pages 1 thru 78	

CONSOLIDATED WITH C.A. 73-H-993 TO BE CARRIED UNDER C.A. 73-H-993 73-H-1

CIVIL DOCKET

UNITED STATES DISTRICT COURT Jury demand date:

JOHN V. SINGLETON, J

Judge

D. C. Form No. 106A Rev.

TITLE OF CASE	ATTORNEYS
BLACKIE HEELEY	For plaintiff: Larry B. Harfoot, Cadle GARDNER, TURNER, HARFOOT, & GUY 910 Houston Bar Center Bldg. Houston, Texas 77002
VS	
HARRIS COUNTY COMMISSIONERS COURT AS AN ENTITY; WILLIAM ELLIOTT, Individually and as County Judge of Harris County; JAMIE BRAY, Individually and as a member of the Harris County Commissioners Court. TOM BASS, Individually and as a member of the Harris County Commissioners Court.	For defendant:

STATISTICAL RECORD	CODE			DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed	Clerk			1-23-73	G, T, K & G	15 00	
J.S. 6 mailed	Marshal			2-20-73	6/0 1-3		15 00
Basis of Action: Constitutionality of state statutes concerning redistricting; Injunctive relief. Action arose at:	Docket fee						
	Witness fees						
	Depositions						

73-H-1033

Page Two.

JOHN V. SINGLETON, J.

DATE	PROCEEDINGS	Date Order or Judgment
7-23-73	Pltf. ORIGINAL COMPLAINT, filed. Summons not issued pending receipt of additional service copy and Marshal's service form.	379
7-24-73	SUMMONS issued on deft. (4).	
7-25-73	(JVS) ORAL ORDER to consolidate C.A. 73-H-1033 with C.A. 73-H-993 entered. Case will be carried under C.A. 73-H-993 and all future pleadings will be filed in C.A. 73-H-993. Parties ntfd. rm.	
	MAKE ALL FUTURE ENTRIES IN C.A. 73-H-993	

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

RICHARD E. MOORE, ET. AL.	:	
	:	
VS	:	CIVIL ACTION NOS.
	:	
HARRIS COUNTY COMMISSIONER COURT, ET. AL.	:	73-H-993 and 73-H-1033

* * * * * * * * * * *

CLERK'S CERTIFICATE

I, V. BAILEY THOMAS, Clerk of the United States District Court for the Southern District of Texas, do hereby certify that the following original exhibits were introduced in evidence upon the trial of the above styled and numbered case:

PLAINTIFFS' EXHIBIT NO: 1 (Small Map of new Precincts and old Precints);

DEFENDANTS' EXHIBIT NO: 1 (Small map of Harris County; Plan #4 - Moore Plan);

EXHIBITS WITH STIPULATION: (Page 215 of Record);

NOS. 7, 8, and 9 (Large Maps; mounted on cardboard);

and the following ORIGINAL DEPOSITIONS: WALTER H. RANKIN,
ROBERT Y. ECKELS,
TOM BASS,
BLACKIE NEELEY (Copy),
JUDGE BILL ELLIOTT,
SHERIFF JACK HEARD, ET.AL.,
BLACKIE NEELEY (Original),
and JAMIE H. BRAY;

and that the same are transmitted herewith as part of the record on appeal of said case in the SUPREME COURT OF THE UNITED STATES.

TO CERTIFY WHICH, witness my hand and the Seal of said Court at Houston, in said District, this 2nd day of April, 1974.

V. BAILEY THOMAS, CLERK
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

By: W. Paul Harriss
W. Paul Harriss,
Chief Deputy Clerk

IN THE

United States District Court

FOR THE SOUTHERN DISTRICT OF TEXAS,
HOUSTON DIVISION

RICHARD E. MOORE, ET AL., *Plaintiffs*

v.

HARRIS COUNTY COMMISSIONERS COURT,
ET AL., *Defendants*

CIVIL ACTION NO. 73-H-993
(CONSOLIDATED WITH NO. 73-H-1033)

STIPULATION

COME NOW RICHARD E. MOORE, J. C. BOLTON, VERNON G. DOERING, J. W. MAHAN, JOHN HOWE BOYNTON, GENE ZABOROSKI, and BLACKIE NEELEY, Plaintiffs in the above styled cause, and COUNTY JUDGE WILLIAM ELLIOTT, COUNTY COMMISSIONERS E. A. LYONS, ROBERT ECKELS, JAMIE BRAY and TOM BASS, individually and collectively as the Commissioners Court of Harris County, Texas, Defendants in the above styled cause, and both the Plaintiffs and the Defendants acting by and through their respective undersigned attorneys of record, agree together that the following stipulations are true:

1. That all Plaintiffs and all Defendants are residents or domicillarys of Harris County, Texas.

2. That Plaintiff RICHARD E. MOORE, at the general election in the State of Texas in November of 1972, was duly elected Constable of Precinct No. 7 of Harris

County, Texas, the term of said office beginning January, 1, 1973, and ending December 31, 1976. That the said RICHARD E. MOORE was duly sworn in to serve as Constable of Precinct No. 7 of Harris County, Texas, on January 1, 1973, and served in that capacity through June 30, 1973. That the Defendants acting as the Commissioners Court of Harris County, Texas, on June 28, 1973, passed an Order redistricting said County's Justice of the Peace and Constable precincts, effective July 1, 1973, the intended effect of which Order was to abolish the theretofore existing office of Constable of Precinct No. 7 as then geopraphically located and to re-locate said Constable precinct elsewhere within the County, the further effect of which was, by operation of law, to remove the said RICHARD E. MOORE from his said office.

3. That Plaintiff J. C. BOLTON, at the general election in the State of Texas in November of 1972, was duly elected Constable of Precinct No. 5 of Harris County, Texas, the term of said office beginning January 1, 1973, and ending December 31, 1976. That the said J. C. BOLTON was duly sworn in to serve as Constable of Precinct No. 5 of Harris County, Texas, on January 1, 1973, and served in that capacity through June 30, 1973. That the Defendants acting as the Commissioners Court of Harris County, Texas, on June 28, 1973, passed an Order redistricting said County's Justice of the Peace and Constable precincts, effective July 1, 1973, the intended effect of which Order was to abolish the theretofore existing office of Constable of Precinct No. 5 as then geopraphically located and to re-locate said Constable precinct elsewhere within the County, the further effect of which was, by operation of law, to remove the said J. C. BOLTON from his said office.

4. That Plaintiff VERNON G. DOERING, at the general election in the State of Texas in November of 1970, was duly elected Justice of the Peace of Precinct No. 7 of Harris County, Texas, the term of said office beginning January 1, 1971, and ending December 31, 1974. That the said VERNON G. DOERING was duly sworn in to serve as Justice of the Peace of Precinct No. 7 of Harris County, Texas, on January 1, 1971, and served in that capacity through June 30, 1973. That the Defendants acting as the Commissioners Court of Harris County, Texas, on June 28, 1973, passed an Order redistricting said County's Justice of the Peace and Constable precincts, effective July 1, 1973, the intended effect of which Order was to abolish the theretofore existing office of Justice of the Peace of Precinct No. 7 as then geopraphically located and to re-locate said Justice of the Peace precinct elsewhere within the County, the further effect of which was, by operation of law, to remove the said VERNON G. DOERING from his said office.

5. That Plaintiff J. W. MAHAN, at the general election in the State of Texas in November of 1970, was duly elected Justice of the Peace of Precinct No. 5 of Harris County, Texas, the term of said office beginning January 1, 1971, and ending December 31, 1974. That the said J. W. MAHAN was duly sworn in to serve as Justice of the Peace of Precinct No. 5 of Harris County, Texas, on January 1, 1971, and served in that capacity through June 30, 1973. That the Defendants acting as the Commissioners Court of Harris County, Texas, on June 28, 1973, passed an Order redistricting said County's Justice of the Peace and Constable precincts, effective July 1, 1973, the intended effect of which Order was to abolish the theretofore existing office of Justice of the

Peace of Precinct No. 5 as then geographically located and to re-locate said Justice of the Peace precinct elsewhere within the County, the further effect of which was to remove the said J. W. MAHAN from his said office.

6. That Plaintiff GENE ZABOROSKI, at the general election in the State of Texas in November of 1970, was duly elected Justice of the Peace of Precinct No. 6 of Harris County, Texas, the term of said office beginning January 1, 1971, and ending December 31, 1974. That the said GENE ZABOROSKI was duly sworn in to serve as Justice of the Peace of Precinct No. 6 of Harris County, Texas, on January 1, 1971, and served in that capacity through June 30, 1973. That the Defendants acting as the Commissioners Court of Harris County, Texas, on June 28, 1973, passed an Order redistricting said County's Justice of the Peace and Constable precincts, effective July 1, 1973, the intended effect of which Order was to abolish the theretofore existing office of Constable of Precinct No. 6 as then geographisally located and to re-locate said Justice of the Peace precinct elsewhere within the County, the further effect of which was, by operation of law, to remove the said GENE ZABOROSKI from his said office.

7. That the Orders passed by the Commissioners Court of Harris County, Texas, certified copies of which are submitted herewith as Exhibits as indicated below, and which are pertinent to this cause, are as follows:

Exhibit 1—Order passed June 7, 1973, redistricting the County Commissioner precincts of Harris County, Texas.

Exhibit 2—Order passed June 28, 1973, redistricting the Justice of the Peace and Constable precincts of Harris County, Texas.

Exhibit 3—Order passed June 28, 1973, creating the office of Justice of the Peace, Place 2, in each of the Justice of the Peace Precincts of Harris County, Texas, numbered 2, 3, 4, 5, 6, 7 and 8.

Exhibit 4—Order passed June 28, 1973, appointing various persons to fiill various Justice of the Peace and Constable offices pursuant to the newly districted Justice of the Peace and Constable precincts.

Exhibit 5—Order passed July 5, 1973, appointing a person to fill the office of the Justice of the Peace, Precinct 8, Postion 1.

Exhibit 6—Order passed July 5, 1973, appointing a person to fill the office of Justice of the Peace, Precinct 4, Position 1.

8. That the map exhibit marked Exhibit 7 and submitted herewith, which depicts the Justice of the Peace and Constable precinct lines as they existed prior to the redistricting of said precincts, which took effect July 1, 1973, accurately and truly reflects such precinct lines.

9. That said Exhibit 7 further accurately and truly reffects the population and square mileage area of each of the said Justice of the Peace and Constable precincts shown thereon as they existed prior to the redistricting of said precincts which took effect on July 1, 1973.

10. That the map exhibit marked Exhibit 8 and submitted herewith, which depicts the Justice of the Peace and Constable precinct lines as they now exist after the redistricting of said precincts, which took effect July 1, 1973, accurately and truly reflects such precinct lines.

11. That said Exhibit 8 further accurately and truly reflects the population and square mileage area of the said Justice of the Peace and Constable precincts shown

thereon as they now exist after the redistricting of said precincts, which took effect on July 1, 1973.

12. That the map exhibit marked Exhibit 9 and submitted herewith, which depicts the County Commissioner precinct lines as they now exist after the redistricting of said precincts, which took effect June 7, 1973, accurately and truly reflects such precinct lines.

13. That said Exhibit 9 further accurately and truly reflects the population of each of the said County Commissioner precincts shown thereon as they now exist after the redistricting of said precincts, which took effect on June 7, 1973.

14. The population counts, by census tracts, of each of the Justice of the Peace and Constable precincts, with a breakdown of the Black and Spanish surname population within each such tract, before redistricting of said precincts, which took effect July 1, 1973, as reflected by Exhibit 10, are accurate and true.

15. The population counts, by census tracts, of each of the Justice of the Peace and Constable precincts, with a breakdown of the Black and Spanish surname population within each such tract, after redistricting of said precincts, which took effect July 1, 1973, as reflected by Exhibit 11, are accurate and true.

16. Commissioner Tom Bass was appointed Chairman of a nine-man committee to study redistricting formed by the Harris County Commissioners Court on March 13, 1973.

17. The redistricting plan adopted by the Harris County Commissionrs Court combined a portion of old Justice of the Peace Precinct No. 6 with Justice of the

Peace Precincts Nos. 4, 5 and 7 and a portion of 3 to form the new Justice of the Peace Precinct No. 4.

18. The Redistricting Plan adopted by the Harris County Commissioners Court was adopted by the following vote: in favor, Commissioners Tom Bass, Jamie Bray and Judge William Elliott; opposed, Commissioner E. A. Lyons and Commissioner Robert Eckels.

19. That Plaintiff JOHN HOWE BOYNTON lives within the boundaries of the former Justice of the Peace Precinct No. 7 of Harris County, Texas, and of the new Justice of the Peace Precinct No. 4 of Harris County, Texas. Pursuant to the provisions of Rule 23 (b)(2), Plaintiff, JOHN HOWE BOYNTON, purports to bring this suit on his own behalf and in the behalf of every resident citizen similarly situated in the former Justice of the Peace Precinct No. 7 of Harris County, Texas. Plaintiff would purport that the class of persons involved is so numerous that joinder of all members of the purported class is impracticable, and would further purport that a common question of law and fact exists as to all members of the purported class. Plaintiff would further purport that the Defendants have acted on grounds generally applicable to the purported class, making appropriate final injunctive relief to the purported class as a whole which would benefit the purported class as a whole. Defendants do not in any way concede that this is an appropriate or proper class action.

20. That Plaintiff RICHARD E. MOORE filed suit under Cause No. 948,328, styled Richard E. Moore v. Harris County Commissioners Court, Et. Al., in the 164th Judicial District Court of Harris County, Texas, seeking temporary and permanent relief from the redistricting Order which took effect July 1, 1973, and a temporary injunction was denied said Plaintiff on June 29, 1973. Thereafter, said Plaintiff took a Non-Suit therein.

21. The numbers of Constables and Deputy Constables within each Constable precinct, both before and after the redistricting of said precincts, which took effect July 1, 1973, as reflected in the Affidavit of S. G. Fullerton, County Auditor of Harris County, Texas, submitted herewith as Exhibit 12, are accurate and true.

[6]

The foregoing matters are all stipulated and agreed to by all parties.

The following are matters which were submitted by the Plaintiff Gene Zaboroski for stipulation and agreement but which were and are not stipulated and agreed to by the Defendants:

1. The Harris County Commissioners Court voted to form a redistricting committee in January of 1973, with the avowed intent to redistrict the Justice of the Peace Precincts and Constable Precincts in conformity with the one man—one vote ruling of the United States Supreme Court.

2. Commissioner Tom Bass selected the members who were to make up this committee.

3. This redistricting committee chaired by Commissioner Tom Bass was made up of special interest groups.

4. This redistricting committee considered nine plans, none of which were adopted.

5. The "Tom Bass' Redistricting Plan" as adopted was never considered by the redistricting committee.

6. That the "Tom Bass' Redistricting Plan" as adopted was not disclosed to Commissioners Eckels or Lyons until they arrived at the County Commissioners Court meeting on the morning of June 28, 1973, at which time it was to be approved.

7. That the nominees to fulfill the newly created Justice of the Peace Precincts and Constable Precincts had been predetermined in secret sessions and not disclosed to Commissioners Eckels or Lyons until the nominations during the meeting on the morning of June 28, 1973.

8. No Republicans were appointed to any of the newly created or vacant Justice of the Peace positions or Constable positions.

9. Three Justices of the Peace who were appointed were non-lawyers, to wit: Edd Miller, Bud West, Albert Lee.

10. Appointee Peavy was Judge Elliott's assistant and staff member prior to being appointed as Justice of the Peace.

11. Shelly Hancock is Ralph Yarborough's nephew.

12. The majority of newly appointed Justices of the Peace and Constables were appointed in the geographical areas that fall within the Precincts of Commissioners Bass and Bray.

[7]

13. The "Tom Bass' Redistricting Plan" was adopted by the Harris County Commissioners Court on July 28, 1973, to take effect July 1, 1973.

14. The vacancy created by the new Justice of the Peace Precinct No. 6 was filled by Albert Lee, a democrat.

15. Commissioner E. A. Lyons and Commissioner Robert Eckels voted against the "Tom Bass' Redistricting Plan" because it did not conform to the purposes of one man—one vote.

16. The Harris County Commissioners Court did not check the residency requirements of the persons appointed to fill the newly created Justices of the Peace and Constables.

17. Racial considerations were deliberately used to set up color and ethnic precinct lines.

18. That Commissioners Bass, Bray and Judge Elliott are Democratic office holders; that they are liberal democrats; that their voter support is heavily Black, Mexican American and Labor.

19. That the primary reason for the redistricting and the resultant lines of the precinct was to appoint patronage individuals whose appointment would constitute a political benefit to Commissioners Bray, Bass and Judge Elliott.

20. The entire redistricting committee established by the Harris County Commissioners Court in January of 1973 was a sham, because Commissioner Bass had already decided what plan he wanted along with the other Defendants, that he had prepared his plan in a secret meeting to which Commissioner Lyons and Eckels were not invited.

21. That the entire matter was a conspiracy to favor racial, minority groups and special interest voter groups for political advantage.

22. That the entire plan deliberately eliminated any Republican from appiontment.

23. That the lines in what was old Justice of the Peace Precinct No. 6, and a Republican precinct, is now redistricted so that Gene Zaboroski, or other future Republic candidates, are now placed in a heavily Democratic precinct insuring Democratic party candidates continued election to office.

[8]

24. That the "Tom Bass' Redistricing Plan" as adopted deliberately eliminated a "safe Republican" precinct and created a safe Black and safe Mexican American precincts.

25. That the voter records of the last election of each of the County Commissioners Bass, Bray, and Elliott indicate that the Blacks, Mexican Americans and Union votes delivered a heavy majority toward their reelection.

26. That Commissioners Bass, Bray and Judge Elliott have voted together in partisan matters on the Harris County Commissioners Court since Commissioner Bass' election to the Court in 1966.

27. That the selection of the citizens committee to study redistricting chaired by Commissioner Bass was a sham in that the Commissioner was stacked six to three in favor of persons friendly to and politically compatible with Commissioner Bass.

28. That the redistricting plan adopted by the Harris County Commissioners Court does not conform to the one man—one vote rule.

29. That the appointment of non-lawyers, i.e. Albert Lee, Bud West and Edd Miller negated the Court's majority statement that one basis for the redistricting was to put lawyers in as Justice of the Peace to replace non lawyers.

30. That the actions of appointing the particular persons newly appointed and changing some office holders to new areas was purely politically motivated by the Defendants Bass, Elliott, Bray faction of the Harris County Commissioners Court.

EDWARD J. LANDRY
Edward J. Landry
Attorney in Charge
for Defendants
202 Harris County Courthouse
Houston, Texas 77002
713-228-8311 Ext. 151

MICHAEL R. DAVIS
Michael R. Davis
Of Counsel
for Defendants
202 Harris County Courthouse
Houston, Texas 77002
713-228-8311 Ext. 151

C. ANTHONY FRILOUX, JR.
C. Anthony Friloux, Jr.
Attorney in Charge
For Plaintiff Gene Zaboroski
1215 First National Life Building
Houston, Texas 77002
713-227-4141

GERALD A. WOOLF
Gerald A. Woolf
Of Counsel
For Plaintiff Gene Zaboroski
1215 First National Life Building
Houston, Texas 77002
713-227-4141

VIRGIL H. BARFIELD
Virgil H. Barfield
Attorney in Charge
For Plaintiffs, Richard E. Moore,
et al.
500 Houston Bar Center Building
Houston, Texas 77002
713-225-9257

JOHN G. GILLELAND
John G. Gilleland
Of Counsel
For Plaintiffs, Richard E. Moore,
et al.
500 Houston Bar Center Building
Houston, Texas 77002
713-222-6127

DAVID HOLLINGSWORTH
David Hollingsworth
Of Counsel
For Plaintiffs, Richard E. Moore,
et al.
500 Houston Bar Center Building
Houston, Texas 77002
713-222-6127

LARRY B. KERFOOT
Larry B. Kerfoot
Attorney in Charge
For Plaintiff Blackie Neeley
910 Houston Bar Center Building
Houston, Texas 77002
713-228-9641

EXHIBIT NO To THE STIPULATION
BEFORE REDISTRICTING

J P & Constable Pct. 1.

Census Tract	Total pop.	Black	%	Spanish	%
121	3,719	527	14.2	370	9.9
122	4,627	853	18.4	3,582	77.4
123	2,042	182	8.9	1,365	66.8
124	4,822	3,965	82.2	122	2.5
125	1,391	67	4.8	462	33.2
126	7,448	6,280	84.3	216	2.9
201	10,834	10,741	99.1	40	.4
202(most)	4,899	460	9.4	2,454	50.1
203(most)	10,123	1,275	12.6	5,774	57.0
204	4,167	4,105	98.5	19	.5
205	16,235	15,206	93.7	1,071	6.6
206	9,231	8,115	87.9	964	10.4
207	10,159	9,202	90.6	627	6.2
208	14,711	12,803	87.	1,808	12.3
209(part)	219	5	2.3	50	22.7
214(1/2)	1,793	307	17.1	392	21.9
215	16,983	9,080	53.5	1,159	6.8
216	6,796	5,191	76.4	61	0.9
217	11,807	10,194	86.3	1,241	10.5
218	11,190	5,251	46.9	1,566	14.0
219	5,964	2,046	34.3	763	12.8
220	6,904	219	3.2	566	8.2
221	2,478	------	----	245	9.9
225	15,844	10,742	67.8	932	5.9
227	5,818	4	.1	344	5.9
301	10,345	10	.1	5,601	53.1
302	5,813	251	4.3	1,656	28.5
303	3,581	3,410	95.2	108	3.0
304	14,204	14,033	98.1	140	1.0
305	11,318	11,210	99.0	87	.8
306	7,634	6,771	88.7	242	3.2
307	12,519	11,938	95.4	208	1.7
308(1/2)	3,512	735	20.9	291	8.3
309(part)	2,431	20	0.8	439	18.0
310(most)	4,742	9	0.2	2,381	50.2
311	9,356	75	0.8	7,051	75.4
312(most)	5,942	23	0.4	4,434	74.6
314(part)	1,905	684	35.9	172	9.8
315	7,663	5,391	70.4	302	3.9
316	5,544	2,825	51.0	244	4.4
317	15,484	11,078	71.5	923	6.0
334(part)	1,390	77	5.6	208	14.9
401	5,963	433	7.3	1,660	27.8
402	11,551	368	3.2	1,782	15.4
403	7,058	67	.9	744	10.5
404	6,805	39	.6	352	5.2
405	9,340	19	.2	832	8.9
406	5,978	86	1.4	323	5.4
407	10,349	142	1.4	582	5.6
408	3,381	1	---	345	10.2
409	3,963	2	.1	156	3.9
410	5,973	5	.1	323	5.4
411	1,466	1	.1	108	7.4
412	9,956	62	.6	408	4.1
413	8,654	15	.2	677	7.8
414	8,948	23	.3	473	5.3
416	18,611	17	.1	855	4.6
417	12,640	8	.1	774	6.1
418	6,369	2	---	483	7.6
419	14,169	91	.6	1,105	7.8
420	14,091	63	.4	779	5.5

BEFORE REDISTRICTING

JP & Constable, Pct. #1
Page -2-

CENSUS TRACT	TOTAL POP.	BLACK	%	SPANISH	%
421	3,698	16	.4	201	5.4
422	16,486	31	.2	648	3.9
423	17,616	1,760	10.0	1,593	9.0
424	12,590	15	.1	549	4.4
425	14,997	38	.3	670	4.5
426	7,640	6	.1	414	5.4
433	6,359	289	4.5	298	4.7
434	880	36	4.1	14	1.6
435	5,937	1	---	220	3.7
436	10,457	15	.1	916	8.8
437	146	18	12.3	32	21.9
438	7,795	53	.7	416	5.3
349	3,866	7	.2	126	3.3
440	16,661	24	.1	672	4.0
441	3,847	---	---	75	1.9
442	12,995	35	.3	586	4.5
443	23,189	8	---	1,011	4.4
444	18,175	7	---	496	2.7
445	12,873	7	.1	446	3.5
446	21,046	9	---	882	4.2
447	13,844	10	.1	476	3.4
448	215	5	2.3	26	12.1
449(1/2)	90	6	6.7	11	11.7
450	185	3	1.6	28	15.1
451(part)	68	5	6.6	12	16.8
501	126	56	44.4	131	74.0
502	3,211	2,562	79.8	569	17.7
503	13,777	986	7.2	9,633	69.9
504	4,097	1,678	41.0	1,778	43.4
505	6,220	1,863	30.0	2,583	41.5
506	9,901	50	.5	1,724	17.4
507	8,603	39	.5	1,379	16.0
508	5,925	1,561	26.3	3,207	54.1
509	12,867	2,204	17.1	2,974	23.1
510	6,865	6,263	91.2	137	2.0
511	6,951	18	.3	1,228	17.7
512	7,617	12	.2	789	10.4
513	3,501	371	10.6	534	15.3
514	7,709	4,451	57.7	790	10.2
515	8,023	925	11.5	1,711	21.3
516	7,778	227	2.9	2,245	28.9
517	13,449	260	1.9	486	3.6
518	13,561	2,439	18.0	973	7.2
519	13,602	1,851	13.6	501	3.7
520	12,975	5,621	43.3	808	6.2
521	10,253	14	.1	1,359	13.3
522	11,967	5	----	770	6.4
523	11,908	26	.2	713	6.0
524	2,121	1,964	92.6	92	4.3
525	10,659	8,352	78.4	148	1.4
526	16,491	113	.7	986	6.0
527	9,680	4	---	559	5.8
528	2,033	1,288	63.4	89	4.4
529	4,513	6	.1	21	.5
530	8,929	4,871	54.6	140	1.6
531	13,744	7,771	56.5	520	3.8
532	12,736	6	----	704	5.5
539(part)	449	35	7.8	8	1.8
540	2,102	-----	----	121	5.8

BEFORE REDISTRICTING

J P & CONSTABLE PCT. #1
Page -3-

CENSUS TRACT	TOTAL POP.	BLACK	%	SPANISH	%
541(most)	1,445	-----	----	30	2.1
542	2,230	997	44.7	324	14.5
543	492	-----	-----	25	5.1
TOTALS.....	975,140	248,095	25.4	114,376	11.7

BEFORE REDISTRICTING

J P & Constable Pcts. #2

CENSUS TRACT	TOTAL POP.	BLACK	%	SPANISH	%
202(part)	1,633	153	9.4	818	50.1
209(most)	656	15	2.3	149	22.7
210	11,981	10,619	88.6	855	7.1
211	10,516	1,395	13.3	433	4.1
212	9,563	----	---	777	8.1
213	5,311	203	3.8	197	3.7
214 (1/2)	1,793	307	17.1	392	21.9
232					
308 (1/2, 50%)	3,512	735	20.9	291	8.3
309 (1/2, 50%)	7,292	59	.8	1,316	18.0
310 (part) 25%	1,580	3	.2	794	50.2
312 (part) 25%	1,981	8	.4	1,478	74.6
313	9,801	33	.3	1,387	14.2
314 (most) 75%	5,716	2,053	35.9	516	9.8
318	19,071	9,787	51.3	1,850	9.7
319	5,786	15	.3	358	6.2
320	15,447	16	.1	871	5.6
321	11,704	1,664	14.2	3,524	30.1
322	11,760	4	----	915	7.8
323	8,408	16	.2	799	9.5
324	11,900	25	.2	421	3.5
325	9,213	5	----	1,353	14.7
326	7,729	1	----	581	7.5
327	10,399	5,065	48.7	757	7.3
328	16,144	12,351	76.5	974	6.0
329	10,526	10,410	98.9	62	.6
330	5,413	5,257	97.1	122	2.3
331	1,029	20	1.9	96	9.3
332	6,479	1,683	26.0	810	12.5
333	2,742	532	19.4	262	9.6
334 (most)	4,169	232	5.6	622	14.9
335	12,921	259	2.0	1,867	14.4
336	1,253	26	2.1	177	14.1
337	427	67	15.7	53	12.4
338	2,641	21	.8	181	6.9
339	10,017	9,962	99.5	104	1.0
340	7,451	6,834	91.7	56	.8
341	347	73	21.0	20	5.8
342	1,080	---	---	161	14.9
343	7,187	5,149	71.6	152	2.1
344	1,706	1	.1	174	10.2
345	6,601	---	---	245	3.7
346	1,960	---	---	180	9.1
347	18,217	10	.1	1,170	6.4
348	11,527	28	.2	1,965	17.0
349	9,537	6	.1	522	5.5
350	8,877	9	.1	332	3.7
351	4,009	---	---	278	6.9
352	68	---	---	9	13.1
356 (1/2)	6,578	5	.1	829	12.6
357 (most) 75%	14,198	4	---	572	4.0
359 (part) 25%	1,215	---	---	94	7.7
370 (1/2) 50%	373	11	2.8	37	9.9
371	9,490	20	.2	403	4.2
372	596	---	---	21	3.5
373 (most) 75%	7,869	22	.3	406	5.2
374	5,472	6	.1	192	3.5
375	74	---	---	34	45.9
415	14,834	56	.4	526	3.5
427	6,118	3	---	312	5.1
428	8,476	18	.2	145	1.7
429	4,616	15	.3	61	1.3
430	3,439	12	.3	155	4.5

BEFORE REDISTRICTING

J P & Constable Pcts. #2
Page -2-

CENSUS TRACT	TOTAL POP.	BLACK	%	SPANISH	%
431	6,951	8	.1	177	2.5
432	2,345	6	.3	39	1.7
TOTAL	427,724	85,292	19.9	35,429	8.3

BEFORE REDISTRICTING

Original J.P. & Constable Pct. 3

CENSUS TRACT	TOTAL POP.	BLACK	%	SPANISH	%
226	3,014	128	4.2	54	1.8
228	3,281	0	0	82	2.5
229	1,790	0	0	219	12.2
230	18,629	9	0	485	2.6
231	6,965	1	0	75	1.1
233	1,596	4	.3	29	1.8
234	2,590	8	.3	183	7.1
235	3,931	2	.1	166	4.2
236	1,747	0	0	0	0
237	625	1	.2	0	0
250	458	0	0	0	0
251	1,917	3	.2	0	0
252	558	4	.7	0	0
253	1,063	136	12.8	43	4.0
254	805	0	0	16	2.0
255	1,681	20	1.2	0	0
256	445	10	2.2	0	0
257	578	1	.2	0	0
258	4,632	2,475	59.3	25	.5
259	6,440	2,016	31.3	76	1.2
260	166	19	11.4	0	0
261	1,814	25	1.4	36	2.0
262	857	17	2.0	297	34.7
263	4,671	4	.1	209	4.5
264	3,366	888	26.4	1,721	51.1
265	1,850	121	6.5	281	15.2
266	4,997	7	.1	316	6.3
267	4,849	19	.4	38	.8
268	1,791	12	.7	0	0
269	6,416	53	.8	158	2.5
270	4,611	31	.7	166	3.6
271	3,170	3	.1	354	11.2
272	4,390	805	18.3	299	6.8
273	4,026	215	5.3	396	9.8
274	1,368	2	.1	0	0
Totals	110,987	7309	6.6	5,724	5.2

BEFORE REDISTRICTING

JP & CONSTABLE, PCT. #4

CENSUS TRACT	TOTAL POP.	BLACK	%	SPANISH	%
222	6,444	272	4.2	1,317	20.4
223	12,251	600	4.9	2,914	23.8
224	14,239	4,204	29.5	1,150	8.1
238	2,560	---	---	105	4.1
239	5,490	77	1.4	611	11.1
240	8,469	4	---	662	7.8
241	3,821	5	.1	243	6.4
242	865	---	---	---	---
243	1,733	353	19.3	---	---
244	1,901	238	12.5	55	2.9
245	4,490	38	.8	71	1.6
246	1,499	873	58.2	68	4.5
247	332	---	---	53	16.0
248	415	1	.2	28	6.7
249	2,355	25	1.1	89	3.8
533	10,695	14	.1	270	2.5
534	1,734	6	.3	24	1.4
535	282	1	.4	---	---
536	2,304	---	---	137	5.9
TOTALS	81,879	6,692	8.2	7,797	9.5

BEFORE REDISTRICTING

Original J.P. and Constable Pct. 5

CENSUS TRACT	TOTAL POP.	BLACK	%	SPANISH	%
25% 541 (part)	482	0	0	10	2.1
550	428	8	1.9	0	0
551	1,236	42	3.4	0	0
552	1,191	18	1.5	0	0
553	2,734	309	11.3	31	1.1
554	435	3	.7	0	0
557	460	203	44.1	0	0
Totals	6,966	583	8.4	41	0.6

BEFORE REDISTRICTING

Original J.P. & Constable Pct. 6

CENSUS TRACT	TOTAL POP.	BLACK	%	SPANISH	%
449 (.25) (part)	45	3	6.7	5	11.1
451 (most) 75%	205	14	6.6	34	16.8
452	2,422	43	1.8	91	3.8
544	37	9	24.3	0	0
545	4,492	0	0	139	3.1
546	399	53	13.3	39	9.8
547	457	132	28.9	0	0
548	352	1	.3	0	0
549	396	41	10.4	18	4.5
Totals	8,805	296	3.4	326	3.7

BEFORE REDISTRICTING

Original J.P. and Constable Pct. 7

CENSUS TRACT	TOTAL POP.	BLACK	%	SPANISH	%
537	1,283	22	1.7	0	0
538	1,998	173	8.7	114	5.7
539 (most) 75%	1,346	105	7.8	24	1.8
555	941	242	25.7	0	0
556	1,731	1	.1	36	2.1
558	2,508	2	.1	35	1.4
559	2,173	393	18.1	72	3.3
Totals	11,980	938	7.8	281	2.3

BEFORE REDISTRICTING

Original J. P. and Constable Pct. 8

CENSUS TRACT	TOTAL POP.	BLACK	%	SPANISH	%
75%					
352 (most)	206	0	0	27	13.1
353	11,445	5	0	1,471	12.9
354	0	0	0	0	0
355	14,403	5	0.0	651	4.5
356 (1/2) (50%	6,578	5	0.1	830	12.6
357 (part) 25%	4,733	2	0.0	191	4.0
358	4,302	1	0.0	193	4.5
359 (most) 75%	3,646	1	0.0	282	7.7
360	12,820	1	0.0	362	2.8
361	8	0	0	0	0
362	131	0	0	0	0
363	991	0	0	29	2.9
364	760	17	2.2	7	.9
365	5,740	906	15.8	601	10.5
366	6,791	4	0.1	478	7.0
367	540	0	0.0	32	5.9
368	6,263	7	0.1	145	2.3
369	2,268	27	1.2	117	5.2
370 (1/2) 50%	373	11	2.8	37	9.9
Totals	81,998	992	1.2	5,453	6.7

EXHIBIT II TO THE STIPULATION

AFTER REDISTRICTING

J P & Constable Pct. 1

Census Tract	Total Pop.	Black	%	Spanish Language	%
121	3,719	527	14.2	370	9.9
125	1,391	67	4.8	462	33.2
126	7,448	6,280	84.3	216	2.9
207	10,159	9,202	90.6	627	6.2
208	14,711	12,803	87.	1,808	12.3
216	6,796	5,191	76.4	61	0.9
217	11,807	10,194	86.3	1,241	10.5
218	11,190	5.251	46.9	1,566	14.0
219	5,964	2,046	34.3	763	12.8
401	5,963	433	7.3	1,660	27.8
402	11,551	368	3.2	1,782	15.4
403	7,058	67	.9	744	10.5
404	6,805	39	.6	352	5.2
405	9,340	19	.2	832	8.9
406	5,978	86	1.4	323	5.4
407	10,349	142	1.4	582	5.6
408	3,381	1	---	345	10.2
409	3,963	2	.1	156	3.9
410	5,973	5	.1	323	5.4
411	1,466	1	.1	108	7.4
412	9,956	62	.6	408	4.1
413	8,654	13	.2	677	7.8
504	4,097	1,678	41.	1,778	43.4
505	6,220	1,863	30.	2,583	41.5
506	9,901	50	.5	1,724	17.4
507	8,603	39	.5	1,379	16.0
509	12,867	2,204	17.1	2,974	23.1
510	6,865	6,263	91.2	137	2.0
511	6,951	18	.3	1,228	17.7
512	7,617	12	.2	789	10.4
513	3,501	371	10.6	534	15.3
514	7,709	4,451	57.7	790	10.2
515	8,023	925	11.5	1,711	21.3
516	7,778	227	2.9	2,245	28.9
517	13,449	260	1.9	486	3.6
518	13,561	2,439	18.	973	7.2
519	13,602	1,851	13.6	501	3.7
520	12,975	5,621	43.3	808	6.2
521	10,253	14	.1	1,359	13.3
526	16,491	113	.7	986	6.0
527	9,680	4	---	559	5.8
Totals	343,765	81,202	23.6	38,950	11.3

Constables & J P Pct. 2 (After)

Census Tract	Total Pop.	Black	%	Spanish Language	%
209	875	20	2.3	199	22.7
210	11,981	10,619	88.6	855	7.1
211	10,516	11,395	13.3	433	4.1
212	9,563	----	----	777	8.1
213	5,311	203	3.8	197	3.7
214	3,586	614	17.1	784	21.9
232	5,750	----	----	182	3.2
320	15,447	16	.1	871	5.6
322	11,760	4	----	951	7.8
323	8,408	16	.2	799	9.5
324	11,900	25	.2	421	3.5
326	7,729	1	----	581	7.5
344	1,706	1	.1	174	10.2
345	6,601	----	----	245	3.7
346	1,970	----	----	180	9.1
349	9,537	6	1	522	5.5
350	8,877	9	0.1	332	3.7
351	4,009	----	----	278	6.9
352	274	----	----	36	13.1
371	9,490	20	0.2	403	4.2
372	596	----	----	21	3.5
375	74	0	----	34	45.9
Totals	145,960	12,949	8.9	9,239	6.3

J P & Constables Pct. 3 (After)

Census Tract	Total Pop.	Blacks	%	Spanish Language	%
215	16,983	9,080	53.5	1,159	6.8
224	14,239	4,204	29.5	1,150	8.1
225	15,844	10,742	67.8	932	5.9
226	3,014	128	4.2	54	1.8
227	5,818	4	.1	344	5.9
228	3,281	0	----	82	2.5
229	1,790	0	----	219	12.2
230	18,529	9	----	485	2.6
231	6,965	1	----	75	1.1
233	1,596	4	.3	29	1.8
234	2,590	8	.3	183	7.1
235	3,931	2	.1	166	4.2
236	1,747	0	----	0	---
237	625	1	.2	0	---
238	2,560	0	----	105	4.1
239	5,490	77	1.4	611	11.1
247	332	0	----	53	16.0
252	558	4	.7	0	----
253	1,063	136	12.8	43	4.0
254	805	0	----	16	2.0
255	1,681	20	1.2	0	---
256	445	10	2.2	0	---
257	578	1	0.2	0	---
258	4,632	2,745	59.3	25	.5
259	6,440	2,016	31.3	76	1.2
260	166	19	11.4	0	---
261	1,814	25	1.4	36	2.0
262	857	17	2.0	297	34.7
263	4,671	4	0.1	209	4.5
264	3,366	888	26.4	1,721	51.1
265	1,850	121	6.5	281	15.2
266	4,997	7	.1	316	6.3
267	4,849	19	.4	38	.8
268	1,791	12	0.7	-----	---
269	6,416	53	0.8	158	2.5
270	4,611	31	0.7	166	3.6
271	3,170	3	.1	354	11.2
272	4,390	805	18.3	299	6.8
273	4,026	215	5.3	396	9.8
274	1,368	2	0.1	----	---
275	81	0	----	----	---
Totals	169,559	31,419	18.5	10,078	5.9

J P & Constables Pct. 4 (After)

Census Tract	Total Pop.	Black	%	Spanish Language	%
220	6,904	219	3.2	566	8.2
221	2,478	---	---	245	9.9
222	6,444	271	4.2	1,317	20.4
223	12,251	600	4.9	2,914	23.8
240	8,469	4	---	662	7.8
241	3,821	5	.1	243	6.4
242	865	---	---	---	---
243	1,733	335	19.3	---	---
244	1,901	238	12.5	55	2.9
245	4,490	38	.8	71	1.6
246	1,499	873	58.2	68	4.5
248	415	1	.2	28	6.7
249	2,355	25	1.1	89	3.8
250	458	---	---	---	---
251	1,827	3	0.2	---	---
522	11,967	5	---	770	6.4
523	11,908	26	0.2	713	6.0
524	2,121	1,984	92.6	92	4.3
525	10,659	8,352	78.4	148	1.4
529	4,513	6	0.1	21	.5
530	8,929	4,871	54.6	140	1.6
531	13,744	~~7,772~~ 7,776	56.5	520	3.8
532	12,736	6	----	704	5.5
533	10,695	14	0.1	270	2.5
534	1,734	6	.3	24	1.4
535	282	1	.4	---	---
536	2,304	-----	-----	137	5.9
537	1,283	22	1.7	---	---
538	1,994	173	8.7	114	5.7
539	1,795	140	7.8	32	1.8
540	2,102	-----	---	121	5.8
541	1,926	-----	---	40	2.1
545	4,492	-----	---	139	3.1
548	352	1	.3	---	---
549	396	41	10.4	18	4.5
550	428	8	1.9	---	---
551	1,236	42	3.4	---	---
552	1,191	18	1.5	---	---
553	2,734	309	11.3	31	1.1
554	435	3	.7	---	---
555	941	242	25.7	---	---
556	1,731	1	.1	36	2.1
557	460	203	44.1	---	---
558	2,508	2	.1	35	1.4
559	2,173	393	18.1	72	3.3
Totals	175,769	~~27,772~~ 27,247	15.5	10,435	5.6

J P & Constable Pct 5 (After)

Census Tract	Total Pop.	Black	%	Spanish Language	%
416	18,611	17	0.1	855	4.6
417	12,640	8	0.1	774	6.1
418	6,369	2	---	483	7.6
419	14,169	91	0.6	1,105	7.8
420	14,091	63	0.4	779	5.5
421	3,698	16	0.4	201	5.4
422	16,486	31	0.2	648	3.9
423	17,616	1,760	10.0	1,593	9.0
424	12,590	15	0.1	549	4.4
425	14,997	38	0.3	670	4.5
426	7,640	6	0.1	414	5.4
427	6,118	3	---	312	5.1
428	8,476	18	0.2	145	1.7
429	4,616	15	0.3	61	1.3
430	3,439	12	0.3	155	4.5
431	6,951	8	0.1	177	2.5
432	2,345	6	0.3	39	1.7
433	6,359	289	4.5	298	4.7
434	880	36	4.1	14	1.6
435	5,937	1	---	220	3.7
436	10,457	15	0.1	916	8.8
437	146	18	12.3	32	21.9
438	7,795	53	0.7	416	5.3
439	3,866	7	0.2	126	3.3
440	16,661	24	0.1	672	4.0
441	3,847	---	---	75	1.9
442	12,995	35	0.3	586	4.5
443	23,189	8	---	1,011	4.4
444	18,175	7	---	496	2.7
445	12,873	7	0.1	446	3.5
446	21,046	9	---	882	4.2
447	13,844	10	0.1	476	3.4
448	215	5	2.3	26	12.1
449	179	12	6.7	21	11.7
450	185	3	1.6	28	15.1
451	273	18	6.6	46	16.8
452	2,422	43	1.8	91	3.8
528	2,033	1,288	63.4	89	4.4
542	2,230	997	44.7	324	14.5
543	492	---	---	25	5.1
544	37	9	24.3	---	---
546	399	53	13.3	39	9.8
547	457	132	28.9	---	---
Totals	337,844	5,188	1.5	16,315	4.8

J P & Constable Pct. 6 (After)

Census Tract	Total Pop.	Black	%	Spanish Language	%
122	4,627	853	18.4	3,582	77.4
123	2,042	182	8.9	1,365	66.8
201	10,834	10,741	99.1	40	.4
202	6,532	613	9.4	3,272	50.1
203	13,497	1,700	12.6	7,699	57.0
204	4,167	4,105	98.5	19	.5
205	16,235	15,206	93.7	1,071	6.6
206	9,231	8,115	87.9	964	10.4
301	10,545	10	.1	5,601	53.1
302	5,813	251	4.3	1,656	28.5
303	3,581	3,410	95.2	108	3.0
309	9,723	79	0.8	1,754	18.0
310	6,322	12	0.2	3,175	50.2
311	9,356	75	0.8	7,051	75.4
312	7,923	31	0.4	5,912	74.6
313	9,801	33	0.3	1,387	14.2
319	5,786	15	0.3	358	6.2
321	11,704	1,684	14.2	3,524	30.1
325	9,213	3	---	1,353	14.7
501	126	56	44.4	131	74.0
502	3,211	2,562	79.8	569	17.7
503	13,777	986	7.2	9,633	69.9
508	5,925	1,561	26.3	3,207	54.1
Totals	179,971	52,263	29.0	63,431	35.2

J P & Constable Pct. 7 (After)

Census Tract	Total Pop.	Black	%	Spanish Language	%
124	4,822	3,965	82.2	122	2.5
304	14,304	14,033	98.1	140	1.0
305	11,318	11,210	99.0	87	.8
306	7,634	6,771	88.7	242	3.2
307	12,519	11,938	95.4	208	1.7
308	7,024	1,470	20.9	582	8.3
314	7,621	2,737	35.9	688	9.8
315	7,663	5,391	70.4	302	3.9
316	5,544	2,825	51.0	244	4.4
317	15,484	11,078	71.5	923	6.0
318	19,071	9,787	51.3	1,850	9.7
327	10,399	5,065	48.7	757	7.3
328	16,144	12,351	76.5	974	6.0
329	10,526	10,410	98.9	62	.6
330	5,413	5,257	97.1	122	2.3
331	1,029	20	1.9	96	9.3
332	6,479	1,683	26.0	810	12.5
333	2,742	532	19.4	262	9.6
334	5,559	309	5.6	830	14.9
335	12,921	259	2.0	1,867	14.4
336	1,253	26	2.1	177	14.1
337	427	67	15.7	53	12.4
338	2,641	21	0.8	181	6.9
339	10,017	9,962	99.5	108	1.0
340	7,451	6,834	91.7	56	0.8
341	347	73	21.0	20	5.8
342	1,080	-----	----	161	14.9
343	7,187	5,149	71.6	152	2.1
414	8,948	23	0.3	473	5.3
415	14,834	56	0.4	526	3.5
Totals	238,401	139,302	58.4	13,071	5.5

J P & Constable Pct. 8 (After)

Census Tract	Total Pop.	Black	%	Spanish Language	%
347	18,217	10	0.1	1,170	6.4
348	11,527	28	0.2	1,965	17.0
353	11,441	5	---	1,471	12.9
354	-------	--	---	-----	---
355	14,403	5	---	651	4.5
356	13,155	9	0.1	1,659	12.6
357	18,931	6	0.0	763	4.0
358	4,302	1	0.0	193	4.5
359	4,861	1	0.0	376	7.7
360	12,820	1	0.0	362	2.8
361	8	--	---	-----	---
362	131	--	---	-----	---
363	991	--	---	29	2.9
364	760	17	2.2	7	0.9
365	5,740	960	15.8	601	10.5
366	6,791	4	0.1	478	7.0
367	540	--	---	32	5.9
368	6,263	7	0.1	145	2.3
369	2,268	27	1.2	117	5.2
370	746	21	2.8	74	9.9
373	10,492	30	0.3	541	5.2
374	5,472	6	0.1	192	3.5
Totals	149,863	1,084	.7	10,876	7.2

Total Pop.....~~1,241,682~~ 774,912

Spanish Language... 172,345

Black.....~~310,682~~ 357,447

% Black..... 20.1

% Sp. Language..... 9.9

[5]

DEPOSITION TESTIMONY OF
COUNTY COMMISSIONER ROBERT Y. ECKELS

Q. For the record, please state your name.

A. Robert Y. Eckels.

Q. Mr. Eckels, you are a Commissioner of Harris County?

A. Precinct 3.

Q. Precinct 3. I am Virgil Barfield, I am with Mr. John Gilleland, we represent the plaintiffs in this cause. Now, then, I have a few questions I want to ask you in regard to a redistricting plan that went into effect in June, 1973. You were a Commissioner of Harris County at that time, were you not?

A. I was.

Q. Mr. Eckels, were you familiar with a committee formed early in 1973 for the purposes of redistricting?

A. I was.

Q. Did you have any vote in the forming of or the appointment of that committee?

[6]

Q. That will be fine. What was the purpose of this committee?

A. The purpose submitted to the Court was to comply with the one man, one vote rule, and to equalize the precincts of constables and J.P.'s and County

[7]

Q. Based on this committee, or the constitution of this committee, is it a fair statement to say there were

members of the Republican Party, the Democratic Party, the Black community, the Latin-American community, the women in the community, the constables and the justices of the peace of the community?

A. Yes, in my opinion.

Q. In your personal opinion, would you constitute, or would you say it is a special interest group constituting this committee?

A. I think the special interest groups were represented. I felt like the composition of it was stacked toward the motivation that I felt like ultimately surfaced in the formation of the committee. Off the record.

(At this time there was a brief discussion off the record, after which

* * *

[8]

Q. Are you familiar with the plan called the Bill Williams Plan, or a Plan 9?

A. Only in that he presented a plan.

Q. Mr. Bill Williams?

A. Yes.

Q. Do you know whether or not this was the plan that was submitted by the committee to the Harris County Commissioners Court for approval?

A. I don't recall which plan was presented to the Court, as such, there were so many changes. I know that in my inquiry, the first time the plan of this phase was presented, and it was held back and then coming back and forth, and then in the final presentation, the lines were changed by Commissioner Bass without consultation with anyone.

Q. I see. Then the ultimate plan that was adopted, voted on, on June 28—I believe, 1973?

A. Yes.

[9]

Bass himself, is that a fair statement?

A. Yes, and different from any other plan presented by anyone else.

Q. I see. Let me ask you, how did you vote on the plan presented by Mr. Bass?

A. I voted against it.

Q. Do you know from your own personal knowledge how any of the other Commissioners voted?

A. There were three votes for it and two votes against it.

Q. Two votes dissenting, one of them being yours?

A. Mine was a dissenting vote. May we go off the

* * *

record?

Q. Do you have any personal knowledge of the—of a purpose of this committee to create a precinct for Blacks or for Latin-Americans?

A. The only apparent changes were for this purpose for creating precincts in the Black and Latin-American areas. They did not, in my judgment, materially affect the one man, one vote rule. In summary, it was not done on the basis of a one man, one vote; they did not equalize the

[10]

districts.

Q. Based on your opinion as a Commissioner, do you feel that the redistricting order of June 28th was in order to create a Black precinct or a Latin-American precinct, and not for the benefit and convenience of the citizens of Harris County, Texas?

A. I feel very strongly this is the apparent reason for it.

[11]

Q. Three justices of the peace. Do you feel that the change of the boundaries dissolving the Precincts 5, 7 and 4 into one Precinct 4 is for the convenience of the people?

A. No, I do not.

[12]

Q. Arising out of any conversation or contact with the committee, was it ever brought to your attention that the purpose of this or ultimate goal of this committee was to form a Black precinct?

A. Among other minority interest groups, yes.

Q. Including Latin-Americans?

A. Yes, this was the opinion that appeared more and more through the course of their meetings.

Q. When the plan came to an ultimate vote before the Harris County Commissioners Court, was there ever any mention of the creation of a Black or minority member of the community for justice of the peace and constable?

A. The Tom Bass Plan, that is the one he conceived without the committee, but the one that was presented was the topic of discussions between several of us, that this was the apparent purpose it did not follow the one

man, one vote rule, but did apparently create districts for special interests and minority groups.

[13]

Q. The Tom Bass Plan, then—let me rephrase the question. Was there ever any mention or any recommendations among the Commissioners Court itself at which you were present, in regards to districting along these lines?

A. Yes.

Q. Along these lines, meaning for the benefit of a minority group?

A. There was considerable discussion when it was presented for approval. The conversation being that its apparent purpose was not in its original intention as stated, which is the one man, one vote rule, and there was strong argument to try not to get it.

Q. Of the majority of the commission, did they ever indicate to you in any manner whatsoever this was their intent?

A. As best I can recall, the strongest allegations that would have been made to this, when I made the accusation, "Well, is there anything wrong with that;" outside of that, I can recall no specific instances.

Q. Excuse me, when you say, "Was there anything wrong with that"—

A. My argument to the proponents of the changes on

[14]

the basis this is strictly on a race and special interest group.

Q. And their answer to that?

A. "Was there anything wrong with that."

Q. With setting it up for the minority groups?

A. Yes.

Q. I understand. Do you feel that the Tom Bass Plan that is presently in effect, effectively applies the one man, one vote rule, which was the ultimate goal of the committee majority?

A. In no way.

Q. Was there any discussion as to the time element at which this redistricting plan was to be put into effect?

A. Not until it came to Court for its final time, when they said it was going to be effective that day, and very poor judgment, in my thinking, to do it in that fashion. I was not aware of any immediate changes of this type, it was my opinion until that day that it wouldn't be effective until the first of the year or until the next election.

Q. Then it was your understanding any order to be entered was to be effective at the next general election, not shortly after the general election of 1972 at which time these constables and

[15]

justices of the peace had just been elected?

A. Yes, I had considered it unconstitutional to move a man out of office, and it was my understanding from the incept of this program that it would not be effective until the election or the first of the year following the election.

Q. I see. Was this pointed out, or was this point argued before the full commission?

A. It was disputed at the time the plan was presented.

* * *

A. The timing of it, that it should not take place until after the next county election.

Q. Would you have any knowledge of whether or not there was any discussion as to —after the order

[16]

went into effect as to who was going to be appointed to the new positions, should vacancies exist after the new order?

A. Yes, there was discussion on the new vacancies. I was involved in some of it, some of it came to the table without my knowledge.

Q. Was there any discussion made in regard to the appointment of a minority to these vacancies?

A. Yes.

Q. Was this before the Harris County Commissioners Court itself, or the committee, where were these discussions?

A. In personnel conference of the Court.

Q. For the benefit of myself and others, what is a personnel conference?

A. Behind closed doors.

* * *

Q. Was any indication given that the appointment of a Black or a minority group to these newly created vacancies was for the purpose of their re-election at a later date?

A. Yes.

[17]

Q. Was this in any way the purpose of those voting to place them in office?

A. In my opinion, it was.

Q. In your opinion. Do you feel—in your personal opinion, do you feel that the installation of a minority member in those newly created vacancies enhanced their chances for re-election in the next general election?

A. I would feel it does, yes.

Q. Do you feel that this move in regards to the redistricting, creation of vacancies, is to enhance—to place and enhance the chances for re-election to the office of justice of the peace and constable?

A. Yes.

* * *

Questions by Mr. Kerfoot:

Q. I have just one question, Commissioner. We went through a moment ago about the conversation that occurred in reference to should the order be implemented immediately or should there be a time lag, so to speak. Was a portion of that discussion in any way related to the right of the people to have their vote?

[18]

A. There was considerable discussion on my part on depriving people of their right to representation more so than the right to vote. You were taking people out of office that had been voted in, and in my opinion, had a contract with the voters, and you were violating this contract between the elected official and the voters, in my opinion.

* * *

tion of the plan and voting on it, to your knowledge was there any reason given why, or did any evidence occur

why this be done, were there any circumstances that prevented the Court from having a time lag?

A. The only comments I can recall was that it needed to be done now, as far away from the county elections as possible, so the dust could settle and not have controversy—the dust would have

[19]

time to settle before elections. I think in Gene Zaboroski's case, as several others, I think there were obvious, because you had elected officials serving in an area they had been elected in, they were displaced and people outside the election appointed to fill the vacancies. Specifically, my very good friend, Shelly Hancock was appointed to fill a vacancy that Gene' Zaboroski, or the justice of the peace at Tomball—what is his name? Joe Mahan, living in the area, but they were not appointed to fulfill those vacancies.

Q. Do you know of any reason why Commissioners Court could not have implemented a time lag, do you know of anything standing in the way, to prevent them?

A. I think they should have.

Q. You don't know of anything that would have prevented them from doing it?

A. I know of no reason why they couldn't have except the vote was three to two against it.

[20]

Q. All right, now, as I understand your objection to the present plan in effect, as adopted by the Commissioners Court on June 28, 1973, with regard to the justices of the peace and constables, that objection is the fact that it did not follow the arithmetical exactness of

[21]

the one man, one vote concept?

A. That, plus the gerrymandering of the boundaries to represent ethnic groups, plus the installation of it at the time.

* * *

Q. And what do you base your objection to that particular kind of redistricting, as to those two particular precincts?

A. I don't think that it is good to isolate a community in any way, shape or form because of their ethnic positions in the community. I don't think you should insulate a Black community from the total, I don't think that you should insulate a Jewish community from the total. I don't think it is the way you are going to have people living together in harmony; I think if you can have a free flow and working together, then you will.

[22]

Q. Do you not think that in a precinct, and assuming one of the precincts is predominately Black and one of the precincts is predominately Brown, to use that color term very generally, do you not think there is a community of interest in, say, one particular precinct which is predominately Black which might be served best by a justice of the peace who might be appointed or who might be Black that might be appointed, and of the constable who might be Black who might be appointed?

A. I think you are definitely doing a disservice to that community, to restrict them in that fashion. I don't think that the Black or Brown of an individual would keep

any qualified individual from becoming an elected official, I think you will find in any position, you will find in an area of balance, that the white people will accept a Black, and a Black will accept a white or Brown or purple, or anything else, as long as they are qualified to fulfill that job, I think you will better serve the needs of the people by treating them all alike.

[23]

Q. How is that harmful to those people?

A. I didn't say harmful other than to the extent it does limit them with the color. I am saying if you were to design the precincts on a one man, one vote basis, as to convenience of the community of the locations, other than just basing it strictly on ethnic purposes, you are going to have a community that will live together and try to erase the color line that is now creating so many problems in the community.

Q. How do you feel, or why do you feel that the present redistricting plan is not for the convenience of the people?

A. Do we have until about 10:00 o'clock?

Q. Yes, sir, if that is what it will take.

(At this time, Counsel Gilleland entered, and was present for the balance of the deposition, which continued as follows:

A. Number one, the implementation of the plan at

[24]

the time that it was put in immediately was expensive. Number two, it was confusing. Number three, it was very

disruptive to the process that the justices of the peace and constables were elected to accomplish. I think that the plan tore at the roots of various communities, particularly your rural areas, without any opportunity for better planning to replace them.

[27]

Q. To summarize your objections to the new redistricting plan, you stated one, it did not adhere to the one man, one vote concept, was one objection?

[28]

A. Right.

Q. Two, it was your impression that the ultimate goal not only of the committee but of the Court as well, was to form two minority precincts?

A. Well, of the majority of the Court. I object—

Q. The majority.

A. I object to the gerrymandering of the boundaries on an ethnic basis.

* * *

A. There are other objections besides those two.

Q. Which I hope in summarizing to take up. Notwithstanding the fact the one man, one vote concept

[29]

Q. Any other objections? One, it was expensive, two, confusing, three, disruptive.

A. Yes, and I think it was a breach of the contract of

the voters and officials they elected, the timing I think was grossly unjust.

* * *

Q. Would that have required gerrymandering lines in order to achieve the one man, one vote?

A. When it became obvious the one man, one vote concept was not the purpose, then it was my feeling we shouldn't do it at all. You ask did I have a plan, I did not put a pencil on a map and draw it, no, I said, "No, what we have is better for the community than what you are proposing."

[30]

Q. I see. Let me direct your attention back to the June 28th meeting. How much advance notice did you have before you actually had to vote on the plan called the Tom Bass Plan, in effect right now?

A. I believe it was published in the paper. Was

[31]

that after the meeting? I was not aware of it before I walked into the Court session, and it was published immediately thereafter, somebody showed me some clippings, I don't know if the day before or day after. I was not aware of any changes that had gone into that until I walked into the meeting, and the plan had been changed so many times.

Q. I see. The final plan that was ultimately voted on, you had very little time to study, is that a fair statement?

A. Yes.

DEPOSITION TESTIMONY OF COUNTY COMMISSIONER TOM BASS

[12]

A. Yes. Well, Bill Williams's Plan was the one we ended up submitting as the committee proposal.

Q. That, I believe, passed by a five to three majority, with you abstaining?

A. Right.

Q. And after the Bill Williams Plan or Plan 9 or Exhibit 9, I believe, shown here was submitted, then slight alterations were made in the plan prior—

A. That plan was submitted in toto.

Q. Yes, sir.

A. And then additional plans were submitted which were slightly alternative, some were considerably alternative, I think two or three additional plans submitted after that.

Q. Okay, was this by the committee or other persons?

A. No, that was by me.

Q. Okay, but just for the purposes of the record, Plan 9 was the one submitted or voted by the

[13]

committee?

A. Right.

Q. But other alternate plans submitted by yourself or considered by the Court?

A. Right.

Q. And ultimately the plan, the—

A. The Bass Plan.

Q. Or the exhibit marked No. 2 was the one selected by the—

A. Court, right.

* * *

Q. Which ethnic group predominates, if any does, within the Tom Bass Plan as it now exists, within Precinct 6?

A. I don't think you will find Precinct 6 has one ethnic group dominating, but I think you will find the Chicano percentage pretty heavy in that group.

* * *

Q. Precinct 7, would it be a fair statement to state

[14]

that the Blacks would be predominately within that precinct?

A. Yes.

Q. I believe at the hearings, do you recall any percentages quoted?

A. I really hate to say what, they were available, but pulling it out of the air, I could say seventy-five percent to twenty-five percent.

Q. Would 62.5 percent sound right?

A. That is probably right, yes.

Q. As generally, as the plan was passed by the Commissioners Court on June 28, 1973?

A. Yes.

[15]

Q. At that meeting with Mr. Hernandez, was there some concern about the Mexican-American population of that Precinct 6?

A. Oh, yes.

Q. Not being adequate or perhaps there were more either Black, or let's say Black?

A. That was a meeting that lasted about three hours, and all kind of ideas were advanced, it would be hard to summarize, but it would be safe to say they were interested in Precinct 6.

[16]

Q. Just for the purposes of the record, was Precinct 7, in your opinion, based so as to provide a precinct, justice precinct, where Negroes or Blacks could be assured of continuing in office after an election?

A. Well, if you are asking me is that one of the things we knew and considered, the answer is yes. If you ask if that was the primary thing, the answer is no.

Q. No, I am asking you—

A. It was one of the factors considered, yes.

Q. All right, I believe these are your figures on there (indicating)?

A. Right.

Q. 238,401 population in Precinct 7. With reference to Precinct 6 as it now exists, could you tell the Court whether or not the consideration in drawing the boundaries of Precinct 6 shown here was so that the Mexican-American population would, while not being in the majority, would be predominate within that precinct?

A. As a factor among a community of interest and regional representation, closer to one man, one vote, many factors, yes.

Q. You took into consideration one man, one vote?

[17]

A. That was taken into consideration. As a matter of

fact, it originally was the major consideration until we got legal opinion that the justice of the peace precincts were not bound by the one man, one vote, and for particular circumstances, we modified that somewhat.

Q. You used the constitutional provisions of the Constitution of the State of Texas as convenience for guidelines?

A. Yes.

Q. Would you say guidelines for convenience rather than one man, one vote would be the guideline in drafting, voting and ultimately redistricting various justice of the peace precinct lines?

A. There were four or five considerations, I cannot tell you the most important consideration. I tell you one that has not been mentioned I thought was very important, that is at the last Legislative session, they had redrawn the house and senate districts on census tracts, and certainly the justice of the peace and constable precincts were not drawn on census tracts. It is certainly easier for the voter, for the clerk, handling voting precincts, if you have the same type of boundaries, or political boundaries. One of the

[18]

considerations was to draw boundaries on census tracts.

Q. I believe you stated, too, at a public hearing you gave population—

A. Right, but another consideration was to approach the one man, one vote, third was to look at possibilities of minority representation; fourth to provide regional services, a lot of factors.

Q. Correct me if I am incorrect, but let me have the population you wrote on the plan as adopted and marked

Exhibit 2, Precinct 7, new Precinct 7, shows 238,401 residents?

A. Right, those are 1970 census figures.

Q. All right, Precinct 6 reflects 180,101?

A. Right.

Q. And Precinct 2 reflects 146,054?

A. Right.

Q. Precinct 8 reflects 149,681?

A. Right.

Q. And Precinct 3 reflects 170,997?

A. Right.

Q. Precinct 1 reflects 342,374?

A. Right.

Q. And Precinct 4 reflects 175,769?

A. Right.

[19]

Q. And Precinct 5 reflects 334,844?

A. Right.

Q. Those are the populations as they now exist after June 23rd?

A. 28th.

Q. June 28, 1973, as reflected by the 1970 Federal census, is that correct?

A. Right.

Q. Now, then, the one man, one vote rule was not applied, as is obvious—

A. No, the Court—

Q. —it was brought more in balance, but not applied strictly?

A. Yes.

* * *

Q. It is certainly in terms of distance, now, or miles from the various offices and sub-offices of any precinct, it is certainly not as convenient for a person residing in Precinct 4 generally as it would be for Precinct 2 or Precinct 6, would that be a fair statement, Mr. Bass?

A. As of this particular time, the statement is

[20]

probably fair, yes. As of when this thing is fully implemented, I am not quite sure; for example, one of the proposals we have already presented and hope to do is in Acres Homes, which is in Precinct 4, have the justice of the peace and a facility he doesn't operate every day of the week, but he comes and hears about once a week.

[21]

Q. In terms of square miles, accepting my figuring is correct, does 515 square miles appear to be approximately the square miles in Precinct 4?

A. I would take your figures for that, I have no idea.

Q. It would be obvious, then, in square miles Precinct 6 would be less than one-tenth?

A. I wouldn't quarrel, whether it be one-tenth or one-fifth, but certainly smaller.

Q. What does it appear to you to be?

A. I don't know, but if it is one-tenth, it is one-tenth, certainly it is a lot smaller.

Q. Likewise Precinct 7?

A. Yes.

Q. It is a lot smaller in area than Precinct 4?

A. Right.

Q. The total populations, combined populations of Precinct 6 and 7, would you add those up, sir?

A. About—238,000 and 180,000 would be 418,000, almost.

[22]

Q. Safe to say 500,000 in round figures?

A. Okay.

Q. So, you have two precincts in downtown Houston?

A. Yes.

Q. Combining Precincts 7 and 6, would the total area or land area of 7 and 6 be equivalent to Precinct 5, which has 334,844?

A. No, I don't think so.

Q. Would it, in your opinion, be equivalent to—Precinct 6 and 7 be equivalent to Precinct 4 in land area?

A. No.

Q. And—

A. Be more, considerably more population.

Q. Greater than in Precinct 5, it would be approximately 85,000 more or 90,000 more in Precincts 6 and 7 than in 5?

A. Probably.

[25]

Q. There was no emergency in redistricting?

A. It depends on what is an emergency or overdue.

Q. You were under no legal or judicial mandate to redistrict?

A. Not at that time.

Q. Is that correct, so this was something that was done because the majority of the Court felt, in their judgment, should be done, would that be a fair statement?

A. Yes.

[26]

Q. Could there have been a drafting of boundary lines along census tracts for the J.P. precincts which could have resulted in less than a ten percent deviation within each J.P. and constable precinct?

A. Yes.

[27]

Q. To what consideration was given for the convenience of the people?

A. Oh, I would think this was probably the major criteria. As I said in my publication, as I said in my newsletter I mailed to the people, the original concept way back went way back to 1876, and the purpose was convenience for the people, to provide regional facilities and services for

[28]

the people, so when we got through with this thing, we would have a minimum of sixteen regional facilities in the county, where at the present time we had eight—or prior to redistricting we had eight; definitely that was a factor, probably as important as any single factor.

[30]

Q. I believe when the proposal was made by you or a motion made, an opportunity was given to all persons attending the meeting to discuss the pros and cons or give their opinions and views, is that correct, as you recall?

A. I am trying to think, that was about the fourth or fifth time that Joggone thing had come before the Court,

even before the Court we had plenty of public comments, I believe even that last time we had testimony from the public.

Q. I believe that is correct. State whether or not

[31]

you stated at that meeting, this would give an opportunity in redistricting to have a J.P. consisting of Blacks?

A. Yes.

Q. And Chicanos, and that—

A. In addition to male and female, right, and white.

Q. But that they may continue in office, giving them an opportunity to continue in office?

A. I am sure if you have got my statement there, you probably have it, I don't remember that particular phrase. How does it read?

Q. I don't have that available, I have it on tape, I didn't bring the tape.

A. I have statements made, I can look at it, I don't recall the exact phrasing at that point in time, so I don't want to say yes or no. Here is what I said, "We are attempting to make it more reflective of the general public by filling vacancies with black, brown and white, in addition to male and female in districts of realistic population variances containing a community of interests. In short, we are attempting to yank the JP/contable system from the depths of ridicule to the position of a vital contributing part of our judicial system." I don't recall

[32]

that statement.

Q. With reference to Precinct 7, in addition to the other things you outlined, you were aware Precinct 7 lines

as they became as of June 28, 1973, a Black would continue in office as a result of the simple majority?

A. I think it is a safe statement to say I was aware a person who was not a Black would probably have a more difficult time getting elected in that district than a Black person.

Q. Would that be a true statement as to Precinct 6 and Chicanos?

A. It is not that clear. An Anglo in Precinct 6 would have a good chance to win, a white in 7 would have a difficult time, but 6 is sort of a tossup between Anglo and Chicano, just on sheer percentages.

Q. Would it be a fair statement to say a majority of the Chicano population is included within Precinct 6?

A. Even that is difficult to say, I think it is safe to say Precinct 6 has a sizeable segment of Chicano, but when you think in terms of total percentage of Chicano population in Harris County, I doubt it is a majority, although I don't know.

[33]

Q. How did you in voting, make a determination that the office was vacant after your order was entered?

A. Okay, in redistricting the J.P. districts—positions one and two, our interpretation of the law, election law, meant that everybody would

[34]

run in 1974, but that the people who were elected in 1974, position two would not have to run for four years, but those in position one would have to run again in 1976 for a four year term, so in every instance we appointed an incumbent justice of the peace in position two,

in effect saying to him, if you are elected in 1974, you are the first one that gets a four year term, and the new guy will have to run again after that, and it was just a matter in a precinct where there was no incumbent—

Q. With reference to Precinct 7, my question is how did you and the Court make the determination a vacancy existed?

A. That a vacancy existed?

Q. Yes.

A. Because by redistricting, we created Precinct 7, a new Precinct 7, there were no incumbents living in that district.

Q. Okay, and you know this of your own knowledge?

A. Well, within fallibility, this is what we had determined, yes.

Q. Likewise, now, Precinct 7 which had formerly been in northwest Harris County, was moved generally to the southeast portion of the City

[35]

of Houston, is that correct?

A. The district was not, the number was. As a matter of fact, I had checked on this, I don't think you will find it was an informal question. I had a number of informal meetings with County Attorney Resweber and others, and one of the questions I asked, because I was concerned, if I created Precinct 7 in the southeast, is this de facto the same Precinct 7 that existed in the northwest, would a person who had been an incumbent in the northwest be moving into the southeast in the new Precinct 7, be an incumbent in 7. We were told no, in this instance there was a definite break in the two districts, this would not be the case, so as far as I was concerned and the Court was concerned, that was new district 7, period.

Q. All right, Precinct 6 was a new district?

A. Right.

Q. It is your opinion and your interpretation, based upon the advice you received?

A. Yes.

Q. That all of the new precincts as of July 1st—all the precincts as of July 1, 1973 were new?

A. Well, they were new, but the law said that even

[36]

with the new districts, that if an incumbent lived in there, he had the job, so they weren't so new in the sense we are going to be able to fill all the positions, because some of the positions were automatically filled with incumbents.

Q. That would have been in addition to relying on what Mr. Resweber stated, that would have been in conformity with—

A. He shall continue in office as justice of the peace and so on.

Q. I will find the right page. Article 2351½ (a)—(c), correct? (b) applies to commissioners?

A. Right.

Q. (a) applies to both, and (c) applies to residence when they have change of boundaries in justice of the peace precincts?

A. Right.

Q. So the authority you relied heavily upon and made your determination upon, Article (c) of 2351½, would that be correct?

[38]

Q. Was any consideration given by you as a member

of the Court to making the redistricting effective as of the next general election?

A. Yes.

Q. What has—why wasn't that done?

A. For several reasons. One, and this is something that is difficult to the average lay person to understand, but I think we are all aware of it. No matter when the effective date was made, somebody's terms had to be shortened, for the very simple reason constables and J.P.s run at different times and elected for four years, even if we made it effective at the general election, we would still have shortened somebody's term. The fact we couldn't have saved everybody's term for the length they were elected is really out the window once you decide to redistrict.

[39]

Secondly, I was in favor of the voters having some chance to evaluate the new officeholders, and the sooner the effective date was, the more time it was they would have, the more the voters in 1974 would be able to see whether that guy was good or wanted somebody else; but third, probably more important than either of these, once we made the decision redistricting was needed to provide regional services, community interests, whatever, once we decided this be done, doggone it, let's do it as soon as practical.

Q. Let me ask one question, I am not getting personal, but would you tell the record whether or not redistricting and the establishment of Precinct 7 as it now exists after the Court's order, was done as a promise to the Harris County Council of Organizations to create a J.P. in precints where Blacks could be appointed and would conceivably be elected?

A. I am not sure what you mean by promise.

Q. Let me rephrase the question.

A. Certainly this discussion came up.

Q. Was this a commitment, without being binding, was this a pledge by you this would be part of

[40]

your consideration for redistricting along the—

A. In the first place, I think my personal reactions to drawing of a Black or Brown district, my personal agreement with this as something needed in Harris County, I have always felt one of the best ways to improve race relations is give them a piece of the action.

Q. I am in agreement with that.

A. This is personal commitment on my part.

Q. Right.

[41]

Q. Was there any consideration given to other ethnic groups other than Black and Chicano?

A. Well, I am not sure they could consider themselves minority group, but it was generally understood

[42]

Q. And, let's see, the various Jewish population of the City of Houston, which is an ethnic minority, when you take ethnic groups as a whole but generally classed as Caucasians?

A. I know—and here is a judgment on my part, and I guess nobody for the Jewish community made a recommendation on this line, I guess— I know I considered

Jewish a religious rather than ethnic minority, but no consideration was given to a "Jewish" district.

Q. But prime consideration would have been to Caucasian, Black and Chicano or Mexican-American, would have been prime consideration in drafting? When I say that would have been consideration, as far as pertains to raise?

A. Okay.

Q. Is that correct?

A. As far as pertains to race, we only looked at three distinctions.

[44]

Q. Because under the law more than two existed?

A. Right.

Q. Judge Lee is in office by virtue—

A. Of reappointment, right.

Q. And I believe, could you state to the record whether or not any of the other three elected officials, Judge Zaboraski, Judge Mahan or Judge Doering were reappointed to the position two that was created in the same order?

A. No, my major decision there, this was just my feeling, I can't say for the rest of the Court, I wanted an attorney in this position, none of those three were attorneys.

Q. Judge Lee is not?

A. Judge Lee is an attorney.

Q. Is not an attorney.

A. I was told he was. He is not?

Mr. Gilleland: Off the record.

(At this time there was a brief discussion off the record, after which the deposition continues as follows:

A. He is not an attorney? All right, someone misled me, but that is not unusual.

Q. Likewise, that would have applied to the constable offices as well, Constable Bolton,

[46]

A. Let me get myself straight. You represent who?

Q. I represent Mr. Zaboroski.

A. Fine.

Q. You stated that there has been numerous reasons for redistricting. What would you consider to be the prime reason for bringing this about?

A. Well, I can only state for myself, because it took a majority of the Court to vote, so what I say might not apply at all to what somebody else felt about redistricting, this would be mine.

I served ten years in Austin, I had seen three redistrictings up there, I had seen what I consider the real disadvantages of the districts that were way off from one man, one vote, I was a real firm advocate of the Supreme Court's ruling when it came to one man, one vote. I have been very much aware of the inequities of the districts in Texas for a long time, and I saw the deviation from less than 7,000 to more than 1,000,000 in Harris County. I think this probably is as good a consideration as major, as important a consideration as

[47]

anything, realizing that that ties in directly with providing services for the citizens.

Q. As I understand your testimony, you say consideration of so-called safe districts for minorities was considered, was brought up in your considering these districts, is that right?

A. Well, it depends on—the term "safe", when you say a district of 62.5 percent Black, okay, I consider in all probability a Black will get elected or re-elected there. When you consider a district thirty-five to forty percent Chicano, I am not sure that is a safe district.

Q. But the reasoning that such a district, with minority representation being over a majority, such reasoning was considered by yourself?

A. As part of community interests and services to the community, you bet.

Q. I believe you might have touched on my next question. In what manner did such so-called safe districts play in your emergency services and community interests?

A. Well, we felt people in Sunnyside and Third Ward have a lot more in common and lot more similar problems and would be provided better service if they had facilities there than if they

[48]

had to come to the downtown courthouse or north Harris County or southwest Harris County, something like that, and therefore the district itself was—District 7 itself is designed in the sense of there will be two regional facilities in that section of the county, and that section of the county happens to be predominately Black.

Q. I believe you made the statement before that relationships could be improved if we give them a piece of the action, that type of reasoning?

A. Yes.

Q. This reasoning was applied in creating these districts?

A. Yes, that plus the fact when you go to redistricting, and you are going to draw eight districts, and you know that any statistics you look at, the Black community makes up roughly twenty-five percent of the population of the county, that you were leaving yourselves open to some potential future court action if you didn't take into consideration Black representation, because many, many cases have gone to the court and have been thrown out because minorities were not represented in redistricting plans that took place previously, so minorities was a consideration in redistricting, because we have seen cases where that was not a factor and they were thrown out.

Q. Now, understanding your reasoning here as far as minority representation and that theory, let me ask you how did you arrive at the boundaries described on Exhibit 2?

A. I am not being facetious, when you try to describe how redistricting boundaries are arirved at, there are innumerable factors, race was a factor, but so were all these other things we talked about, services to the community, population was a factor, natural boundaries, although it is hard to define natural boundaries, but they are part of the picture. For example, in Precinct 7, that particular district runs straight down Mykawa Road all the way, it is just a feeling that sort of marks the boundary between one community and another community. Well, I am not trying to dodge the question, it is a question difficult to answer, you have incumbents, you have people with political ambition, you have all kind of factors that go into drawing a line.

Q. Would it be safe to say race played a more dominant part than one man, one vote, really, in drawing these lines?

A. I don't think so, again I can't talk for anyone but myself. The main reason this plan was submitted rather than my complete going on with Bill Williams' Plan, the Bill Williams Plan did the same thing as far as creating minority districts is concerned, but it was way, way off on one man, one vote. If my major consideration had been minority consideration, I would have gone behind the Bill Williams Plan and pushed it as the committee plan, but since it was off one man, one vote, I took the unpopular stand of making another plan, muddying the water more, to get closer to one man, one vote. You will see District 7 is not a heck of a lot different under Williams than this one.

* * *

Q. Commissioner Bass, I believe you earlier stated you spent some ten years in Austin, that was as a member of the Legislature, was it not?

A. That's right.

Q. What was that period of time you served as a

[51]

member of the Legislature?

A. From January, 1963, to January 1973.

Q. And you were a representative in the House of Representatives?

A. That's right.

Q. During that time, did you not also state that the Legislature had attempted on three different occasions to

redistrict the state, both as to the representatives as well as to the senators?

A. Right. Well, three broad times, there were some minor redistricting, more than that where they changed a few lines, but major overhaul, three times.

Q. As a member of the Legislature yourself, you were involved in that redistricting?

A. That's right.

Q. Were you more involved, say, than the average member of the Legislature?

A. Yes.

Q. Where you might have been a member of the specific committee?

A. I was member the last time. I was twice a member of the Harris County delegation, was running, in effect, with the majority the Harris County delegation felt should be done as far as

[52]

redistricting was concerned.

Q. At various times, those particular redistricting attempts by the Legislature were contested in various courts?

A. Right. As a matter of fact, the one drawn the last time, over my violent opposition, publicly, privately, every way, was stricken by the courts as being unconstitutional.

Q. That was done by a Federal court, was it not?

A. Right.

Q. So, you had considerable experience, I take it, from your participation in those redistricting plans for the Legislature, with redistricting?

A. Oh, definitely, and with court decisions concerning redistricting, plus the fact my fulltime—I am a politician by accident, a teacher by profession, which profession is

teaching political science at the University of St. Thomas, I have been very involved in Supreme Court rulings on redistricting, particularly, starting with Baker vs. Carr.

Q. All right, sir, and are you presently teaching at the University of St. Thomas?

A. I presently teach an evening class in order to retain my tenure, so I have a job if I decide

[53]

not to run again or something.

Q. You teach political science?

A. Right.

Q. Do you hold a title there?

A. Yes, Chairman of the Department, and professor.

Q. How long have you been Chairman of the Department of Political Science?

A. Four years.

Q. When you came on board the Commissioners Court, you had this extensive background in redistricting, and you, I take it, were primarily interested, of course, in seeing that the county was districted properly, both as to Commissioners Court as well as justice of the peace and constable?

A. Right.

Q. Your answer is right?

A. Right.

Q. And I believe you stated that you became a member of the Commissioners Court January 1, 1973?

A. Right.

Q. And that you were appointed—

A. There were two steps—may I interrupt?

Q. Yes.

A. Two steps, first, Commissioners Court appointed me as liaison to look into the possibility of

[54]

redistricting.

Q. When was that, again?

A. That was the 12th of January.

Q. All right.

A. So, and then when I came back in to recommend after that—I have the date, I don't remember exactly when, I had a recommendation of a nine member committee, then Commissioners Court appointed that nine member committee.

Q. Is that the date you don't recall?

A. Yes, I have the letter here, but I just—12th of January, they appointed me liaison.

Q. For the specific purpose of looking into redistricting?

A. Right, and then—if I can find it here. Well, I don't have the date at my fingertips, but it would be later, the latter part of February.

Q. That was a short time after you were appointed liaison member of the Court for redistricting purposes?

A. Yes. At that point in time, the Court then appointed —here is the date of the 12th of March, that is when we were officially organized as a committee on order of the Court.

Q. On the 12th of January, you were appointed by

[55]

the Court to act as liaison for the purposes of looking into redistricting?

A. Right.

Q. On the 12th of March, 1973, the Court actually appointed this committee?

A. Right.

Q. That was a committee of some nine persons?

A. Right.

Q. I believe you were elected chairman by that committee?

A. No, I was appointed chairman by the Court.

Q. There were eight other persons members along with you on the committee?

A. Right.

Q. And in your study, both prior to the time of your appointment to the chairmanship of that committee and after the committee had been formed, were you able to determine the last time that Harris County had been definitively districted as far as justice of the peace and constables were concerned?

A. The nearest I can find on that is 1876, where they drew up the constitution, we didn't originally—

(At this time there was

[56]

a brief discussion off the record, after which the deposition continues as follows:

A. As far as I can tell, you can overlook something, but one hundred years ago, sometime in that time would be, but what research I have done, what research others presented to me, it has not been done since 1876.

Q. All right.

Mr. Landry: Mr. Gilleland, I believe for the record, we can stipulate 1876 was the last time it was redistricted?

Mr. Gilleland: Right.

Mr. Kerfoot: Yes.

Mr. Cox: I guess so.

Q. Now, prior to this redistricting on June 28, 1973, by Commissioners Court, how many precincts were there in the county?

A. There were eight justice of the peace and constable precincts. As you know, the law says there can be from four to eight precincts, so Harris County had eight.

Q. Among those eight precincts, how many justices of the peace were there actually in office prior to June 28, 1973?

[57]

A. Nine.

Q. And I take it there were two justices of the peace in one precinct, with one justice of the peace in the other seven?

A. Right.

Q. Which particular precinct had two?

A. Precinct 1, the precinct that had 1,000,000 plus people had two justices of the peace, all the rest had one.

Q. All right, now, after the redistricting, how many J.P.s were provided for by the Court with the new plan?

A. Sixteen provided for and fourteen offices were filled.

Q. All right. I take it the Court will at some time in the foreseeable future fill the other two?

A. The only delay for their selection is simply getting housing facilities for the ones we have now, and then we will fill the other two.

Q. And under the law, of course, one constable is required and authorized for each of the precincts.

A. That's right, and only one.

[59]

Q. And I believe the Commissioners Court has recently, in connection with redistricting, redistricted the county as to county commissioner precincts?

A. That is correct.

Q. And did you all apply the one man, one vote concept with regard to that body?

A. Quite definitely. The deviation now is less than one-half of one percent between the smallest and largest commissioners precincts, as of 1970 census figures, which are the latest figures we have.

Q. When did the Court redistrict the county with regard to commissioners precincts?

A. I think that was probably two or three weeks prior, two weeks prior to this J.P. one, it

[60]

was all part of the same study, but I think the vote was two weeks earlier.

[62]

Q. After the committee was formed on March 12th of 1973, how many times would you say, or can you recall, that the committee met to consider redistricting of the J.P. and constable precinct?

A. Given time ahead, I could look it up in detail, I will give you a rough answer. I know we held three public hearings. By public, in the Jury Assembly Room, everybody invited.

Q. Let me ask you by public hearings, was any notice given?

A. Yes.

Q. By way of newspapers, that sort of thing?

A. Right.

Q. Did you publish the fact?

A. We did not publish in the sense of buying a paid ad, but published in the sense I issued a news release prior to each meeting, and the news media carried it.

Q. In addition to those three public meetings, did you all have other meetings?

A. Yes. These other meetings, I don't mean to imply

[63]

not public, but not publicized in the same sense as the other three hearings. We had at least three hearings in the open, Commissioners Court, in which anybody could come, but not publicized to the same extent as the three in the Jury Assembly Room.

Q. Did various members of the public attend those?

A. The ones here yes, but not the same extent as the ones publicized.

Q. Were those extensive meetings?

A. Yes.

Q. That is lengthy, annd was there considerable discussion held?

A. Oh, yes.

Q. Did members of the public participate in these?

A. Definitely. As a matter of fact, it was of sufficient numbers and intensity that the constable involved and Sheriff's Department felt it might be good to have some people around.

Q. For law enforcement purposes?

A. Right.

Q. And during the time that the committee was meeting, were there—was this topic of redistricting of the J.P.s and constables discussed in the various Commissioners Court meetings along

[64]

about that same time, did the topic come up?

A. The topic didn't come up on the official agenda

until about, I guess, three weeks before we adopted it, as I recall, I might not be quite accurate. I submitted all the proposals one week, the next week we voted on Commissioners Court, then two weeks later, on J.P.s and constables, which would mean three weeks. During that time it was discussed in open court, but obviously, eating lunch, passing in the hall, various Commissioners chit-chatted about this thing.

Q. During this time, was there not considerable publicity being given to these redistricting plans?

A. Definitely.

Q. In the various newspapers?

A. We made the front pages of both papers.

Q. Houston papers?

A. Right, Houston Post and Houston Chronicle.

[65]

Q. Now, in your opinion, from your study of the

[66]

various plans, was the Williams Plan among the committee plans, the only plan which could be considered to have had an ethnic group, as such, either Black or Brown?

A. Not at all.

Q. Carved out as precincts?

A. Not at all.

Q. How many of the others would you say would have had Brown or Black precincts, as such?

A. If I am not mistaken, I may be off a little bit, but not much, every plan, with the exception of the existing boundaries, every plan submitted, every plan had what you call minority precincts, including Constable Moore's plan.

Q. That would be by minorities, you mean Black and/or Brown precincts?

A. Right.

Q. Would it have been difficult or would it have been an easy task to draw up a plan which would not have had either a Black and/or a Brown precinct?

A. Well, we could have kept the same districting there, and those did not have a Black or Brown, but once you get beyond one district that has one million citizens, you start getting the

[67]

districts anywhere near equal, it will be pretty difficult I would say to have one that does not have a preponderance of one or the other minorities.

* * *

Q. Is it not true you earlier testified consideration

[68]

also was to making the representation of the people in the various J.P. and constable offices more reflective of the people by making it possible for not only whites, but for Blacks and Browns and women?

A. Yes.

Q. To be holders of those various offices?

A. Right, yes, that is true. Of course, another point that has not been mentioned, again one among many, I am really concerned and in complete agreement with the Bar's opinion that the J.P.s ought to be attorneys, and another emphasis in filling new positions was to get qualified, bone-fide attorneys into J.P. positions, to make it a position of prestige, if at all possible.

Q. All right, sir. I believe you also stated that the Court either has or plans to have court facilities in the number of some sixteen throughout the county?

A. Yes, we are specifically requesting that the J.P.s, the two J.P.s in a single district, do not initially—well, hopefully never, but do not initially have the same court facilities, we want them in separate court facilities.

[74]

Q. With regard to the redistricting plan, I take it the Court was primarily concerned with satisfying the requirements of Section (3) of Article 2351½ in regard to J.P.s and constables, is that not right?

A. This is in the filling of the vacancies, all that has to do is filling vacancies. If it is redistricting, that doesn't relate to redistricting. I don't know what your question is.

Q. I think that answers it. Under Article 2351½, you all tried to comply with those requirements regarding filling of vacancies?

A. Right.

Q. I take it under 2351½, the redistricting as adopted by the Court required filling of vacancies as they occurred by reason of the redistricting with incumbents on a residential basis?

A. Right.

[76]

Q. All right, sir, so the Court then fully complied with the requirements of Article 2351½?

A. Certainly; as far as I can tell, we did.

Q. To summarize your testimony with regard to the reasoning and reasons which the Court relied on in the redistricting plan as now in effect I believe you stated

one, and you described it as a real important consideration as far as you yourself was concerned, was drawing of boundaries on census tracts?

A. Yes.

[77]

Q. All right, then, another consideration was to make the various precincts more equal in population than they were under the old existing plan?

A. Right.

Q. Under the old existing plan, there was a variation from 7,000 to 1,000,000?

A. Less than 7,000 to more than 1,000,000, right.

Q. What is the greatest disparity now?

A. From approximately 145,000 to 345,000, about 200,000 variance.

Q. Another consideration was in your words, to give minorities a piece of the action?

A. That was another consideration.

Q. And the Court did, in fact, pursuant to that appoint a Black J.P. and Black constable, did

[78]

it not?

A. That's right.

Q. In the predominately Black precinct?

A. Right.

Q. Which precinct number is that?

A. 7.

Q. And did the Court also appoint a Mexican-American J.P. and a Mexican-American constable?

A. Right.

Q. In the predominately Mexican-American precinct?

A. Yes.

Q. What precinct number is that?

A. 6. As a matter of fact, two Chicanos there, two Chicano J.P.s and one Chicano constable.

Q. All right, sir, and another consideration, I believe you stated, was to provide regional services?

A. Right.

[79]

One other thing, we did appoint—it has nothing to do with it, but we did appoint a woman to J.P., again apparently for the first time in the history of the county. There were two women, the second woman's name I won't mention, she declined for personal reasons, I talked to about filling vacancies, one declined, but as far as I was concerned, there would be two women appointed but one declined.

Q. As far as you know, is this not the first time a Black or Mexican-American has been appointed as constable or J.P. in Harris County?

A. As far as I know.

Q. Would it be your opinion in both of these two

[80]

precincts, 6 and 7, that in the respective precincts as represented by a Black J.P. and Brown J.P., as well as the Black constable and Brown constable, that the people in those areas would be better served, law-enforcement-wise, by people with their own district predominance?

A. This is a personal thing on my part, a lot of people disagree, but I feel it is a better situation than previously existed.

DEPOSITION TESTIMONY OF COUNTY JUDGE BILL ELLIOTT

[6]

Q. Perhaps the question was a little unfair. Let me put it this way. Had you personally, along with Commissioner Bray, ever had any personal meetings or conversations with Mr. Bass prior to his becoming a member of the Commissioners Court concerning the desire to change these Justice boundaries and Constable boundaries as they were ultimately done?

A. Yes.

Q. Approximately when did these first conversations take place?

A. Probably sometime during his campaign, back in the early

[7]

Q. All right. And have you had an opportunity to read Commissioner Bass' deposition under oath?

A. Yes, I have.

Q. Okay. Then I can refer to it. I don't have a copy of it. If I ask a question and you want to rely back on it, if you have a copy with you, certainly we can take the time to do it. I don't think there will be that much, but I want to be fair, because I am asking about somebody else's statements outside their presence.

Commissioner Bass, as I read his deposition—and I will state I read it quickly, yesterday evening I received my copy—stated that one of the purposes, although not the only purpose, of the ultimate plan as approved by the Commissioners Court which resulted in the new boundary lines as they are now constituted was to see that, as he put it, there were safe precincts, both Constables and

Justices, for both Black and Mexican Americans. In other words, racial and ethnical minorities.

Mr. Landry: Subject, now, to what the deposition actually reflects with regard to Commissioner Bass, I have

[8]

no objection to what you represent Commissioner Bass having said in his deposition.

* * *

A. The makeup of the county, I think, is such that to redraw Justice of the Peace precinct lines, Justice of the Peace and Constable lines, would be that a somewhat safe precinct—when you consider the community interest and the nature of the Black segment of Harris County, it would be difficult to not draw precinct lines in this regard. It would be almost a matter of gerrymandering to prevent such an act.

[9]

part of the political facts of life in our area.

Now, my question is, then, I think perhaps more fairly, would be directed to you, Judge Elliott, and that is as you discussed personally with Commissioner Bray and Commissioner Bass the proposed idea of creating these new Justice and Constable precincts, was this in fact a primary consideration given so that when the ultimate lines would be drawn, as they now have been, that there would be two or three areas where the safe so-called political havens would be for persons of Black and/or Mexican-Americans, or other ethnic minorities to be elected to these positions?

A. That is a very general question, but—

Q. Let me break it down.

A. No. I just say yes, in the general context. I would question the use of "as a primary factor." There were many factors.

* * *

Q. What were the factors that you discussed with Commissioner Bass that were a predicate, or the basis for, in fact, the decision to redraft along the lines ultimately finalized?

A. I think—not in the order that I will state them, but as a result of action taken by the legislature the

[10]

Justice of the Peace and Constables had gotten their salary raised and then legislation causing the county to pay a salary to those that were elected by three or four hundred people the same as those that were being elected by three or four hundred thousand. The discrepancy in the size of the districts populationwise is certainly one of the major factors. The size, the location of the precincts, even the matter of availability to the Justice of the Peace and Constables offices. The fact that we did want to increase the number of offices, which is really maybe the primary factor, to provide subcourthouse facilities through Harris County.

* * *

Q. All right. And based on—and I can only base this on what I have been advised, what I have read, members of the Court have been quoted as saying in the news media and talking to the reporters who interviewed them, that there was little or no question that one also very primary purpose was to assure these safe districts would be created.

A. This was a factor.

[11]

Q. I have no recollection of any.

Now, in that regard, was any discussion ever had concerning the drafting of these districts what effect the change of the district that Mr. Zaboroski was in, the old District 6, would have on the Republican voters, with the growing number of Republicans living in that area, with whether or not they would have the opportunity to, likely, elect another Republican Justice in the newly created district? Was that considered at all?

A. I would imagine there was some conversation along this line. I think it is fairly evident from the lines of Precinct 5 that this seems to be a safe Republican area; may or may not be.

[12]

that could very well—which would be another area that could go Republican.

Q. As far as I know, and I ask if your recollection is consistent with mine, this Precinct, old 6, was the only one that ever actually sent a Republican to the office of Justice of the Peace in recent history?

A. I think that is correct.

[13]

Q. All right. Would you let me have the names of any of the persons appointed who were proposed to the Court by Commissioners Eckels or Commissioner Lyons?

A. I think Commissioner Eckels and Commissioner Lyons had a recommendation in regard to at least one, but I question whether or not I am at liberty to disclose that discussion

[15]

Q. I think we can leave that area.

Now, one of the apparent factors given by other members of the Court, at least as I understand it, was that it was a desire based on this disparity of salary increase in an attempt to upgrade the position of Justice of the Peace, one of the factors that the Court considered, at least Commissioner Bass said he considered, was the fact it would be desirable to have a lawyer sit in the positions. And my question to you would be: Was that in fact a substantial reason or basis in part for this redistricting, in order to assure lawyers to accede to the position of Justice by appointment, rather than non-lawyers?

A. Again, this was a factor. It goes back. But the primary factor was the establishing of the subcourthouses. But it naturally followed that I have been a personal advocate of lawyers being judges. In two or three of my campaigns

[16]

this has been an issue.

[18]

Q. In other words, the responsibility for and the ultimate selection of these committee members was done by Commissioner Bass?

A. That is correct.

* * *

Q. All right. Now, let me ask you a couple of political questions. I am asking you this as an office holder of many years. Commissioner Bass in his commissioner precinct was primarily supported by, of course, a liberal voting majority, isn't that true, composed of in large part Black, Mexican-Americans and Union voters?

A. In his wing of the election?

[19]

Q. Yes.

A. His record is such that this is the usual area that he gets major support from.

Q. Right. Justice Republican would seek the conservative on the other side.

A. There are a number of conservatives that support Commissioner Bass.

Q. I am sure that is true. I know a number of them support you, also.

A. Yes.

Q. But I was asking for the general political complexion of that particular commissioner. And I would ask the same question as to Commissioner Bray. His general political support primarily come—by that I mean where he has to really look for election to a strong voter turn out—in these three general voting blocks, the Black, Mexican-American and the Union voter?

A. This is generally the makeup of Precinct 2 more so than it is of Precinct 1.

[20]

A. Okay. Now, to get into this area a little bit more, as I understand—and again, I am predicating this as I understand. I have not interrogated Commissioner Bass nor did I have a chance to take his deposition because I entered the case later. I understand that the records from our investigation—this will be subject to challenge, because the records will speak for themselves—indicate that a substantial portion of the Black precincts and the precincts identifiable from a voter standpoint as Mexican-American and certainly the voter precincts identified as Union delivered substantial majorities for all three members of the Court, yourself, Commissioner Bray and Com-

missioner Bass in your last elections, with few, if any, exceptions? That is a general question.

A. That would not be a correct statement.

Q. All right. Not generally correct?

A. It is correct as to Commissioners Bass and myself, but it is not correct, I believe the record will show, in regard to Commissioner Bray.

[21]

Q. So this redistricting would certainly do, as you said a politician must do, shore up and broaden his base, to say the least, wouldn't it?

* * *

Now, there was no serious consideration given, of course, to appointing a Republican to any one of these positions, was it, by the Court, as far as you yourself know?

A. Yes, there was.

Q. All right. What was the primary factor which caused the Court to decline to do this? I am not asking for any confidential conversations or personalities, but the basic reasons.

A. They just were not selected.

Q. All right. It wasn't a question of fitness? There were certainly plenty qualified Republicans that would have fit the bill as much as a non-lawyer would have fit the bill for a J.P., wasn't it?

A. There was.

Q. Would you concede it was not a fitness question?

[22]

Q. I don't mean to imply everybody sat down and said, "Let's sap these Republican's." I doubt very seriously

that would occur. I am just saying the subject of the decision was not there had to be a reason not to appoint a Republican, since we were spreading out the patronage in this case—and this is what you call new appointees or not elected by the people—we were spreading out the patronage, or taking care of groups and my group wasn't taken care of and I would like to know the reason. That question is posed on behalf of Republican deposed Justice of the Peace Zaboroski.

A. Very serious consideration was given to the appointment of Judge Zaboroski. And I feel confident that if he had been a lawyer that he would have been reappointed.

Q. Well, he was actually in truth replaced by Judge Albert Lee, wasn't he, a non-lawyer?

[23]

A. Yes.

Q. Which is really kind of contrary to your basic publicly stated posture. Right?

A. That is correct.

Q. Now, the Statute, I understand, provided part of the reason for that particular circumstance, the way the lines were drawn Lee happened to fall within the newly created Justice precinct and since there were not two there was not a vacancy and so he actually acceded to a position he had not been elected to by the basis of the peculiar Texas Statute. Is that correct?

A. Yes.

Q. And it was possible for the commissioners as they sat down in their wisdom to change these boundaries in any particular manner they so desired in order to achieve any purpose they wanted to achieve?

A. That is correct.

Q. Also had the right to have appointed Judge Zaboroski rather than Judge Lee in that particular instance?

A. Right.

Q. Had there really been a serious desire, for instance, in one thing, to locate—excluding creating safe districts—regional courthouses—in other words, a primary consideration wasn't first to place nine, eight, seven or six regional courthouses just geographically then draw the

[24]

lines to conform, but in truth and in fact it drew the precinct lines and then with the idea, "We will later come on and determine the location of the courthouses." Isn't that true?

A. Yes, I think that is correct.

Q. All right. Now, one other area that bothered me in the case, in reading the deposition—I am trying not to recover much of what was gone into in Eckels' deposition—one area that bothered me was who made the basic recommendation on the Commissioners Court to have this change take effect immediately, as opposed to the next general election so that the voters would not be disfranchised immediately after having just elected people in office in a general election?

A. I think it was the consensus of the majority to move forward.

Q. All right. These things don't happen by osmosis; somebody has to say—somebody negotiates that. Who was the majority of three that made the plan or suggested that we do it now, and then I want the reasons for it, but let's first find out who made the suggestion?

A. I think this probably was Commissioner Bass, because he was the liaison—he had conducted the various committee meetings and—

Q. He was primarily running this section of the thing while

[25]

the Court was doing many other things. Is that correct?

A. That is correct.

Q. Okay. Now, what in your judgment justifies doing these appointments now, as a member of the majority, as opposed to creating these districts and leaving them as they are until the next general election and allowing the voters to select those people who would sit in judgment of them as Judge or handle their security matters as Constables as had been done in the Commissioners change just previously?

A. Well, this was different. I think this was a more fair way of doing it than what we did in the commissioners redistricting five years ago. At that time we moved an entire commissioner's precinct from the north to the west because one of the commissioners was going to retire, and this then allowed approximately one-fourth, almost one-fourth of the voters at that time not to have the opportunity to vote on a commissioner. I thought that was very unfair at that particular time.

This time I think the feeling was that there were some legal problems—I believe in regard to a case in San Antonio—whether or not if precinct changes were made that Justice of the Peace present office holders would move from one place to another and establish residence. That plus another factor being that by these

[26]

appointments the people this next election would have the opportunity to look at the individuals that had been appointed that were the office holders and to then have an opportunity to make a selection of their own.

Q. Well, they normally have this at every open election, anyhow, don't they?

A. Yes. But for Justices of the Peace who remained in office going from a 6,000 population precinct to a 150,000 population precinct the additional people there would not have had any opportunity of voicing selection in regard to that particular individual any more so than if we had appointed him.

[27]

Q. Judge Elliott, I believe you testified as to the factors which underlay the Court's decision to redistrict at the time that it did. One of the factors being the disparity in population. There was considerable disparity between the existing JP precincts as they existed prior to the redistricting, was there not?

A. That is correct.

Q. And in addition to that factor, and I suppose this would have to do with the disparity as a result of the legislature having upgraded salaries for JP's and Constables, and it was patently unfair to be paying one JP or Constable the same salary as another JP where the first JP or Constable was elected by three or four hundred voters in a precinct of a few thousand compared to another JP or Constable in another precinct with three or four thousand people?

A. That is correct.

[28]

Q. In addition to those two factors, I believe you stated one additional factor was the desirability of the Court to place lawyers in the various Justice of the Peace positions?

A. That is correct.

Q. All right. And I think you also stated that among those factors and other factors the Court did give consideration to the formation of minority precincts; that is, consideration was given for the purpose of having minority representation in county government?

A. That is correct.

Q. And I will also ask you if the Court considered the redistricting on the basis of the Federal Census Tracts?

A. Yes.

Q. All right. Can you just offhand recall any other factors which the Court gave consideration to for the redistricting which ocurred on June 28, 1973?

A. That would be the factor of the subcourthouses and the providing of services within the area, making these services more available. This is, I think, a philosophy of the majority of the Court, and we hope to have the various county functions in these subcourthouses.

Q. All right. These have generally been referred to in the press as regional facilities. Is that not right?

[29]

A. That is correct.

DEPOSITION TESTIMONY OF COUNTY COMMISSIONER JAMIE H. BRAY

[73]

Q. Now then my question would be: Whether or not there was consideration on your part in casting your vote for changing the boundaries of the JP's and Constables, was there a consideration by you given to the one man-one vote principles?

A. I think this was the first plan that we started out talking about, was maybe one man-one vote. And I think someone had proposed a plan close to that at one time. But in looking at it, we looked at the number of papers served, the best we could, and frankly here is something else that we are attacking, is an adequate record keeping system. Hopefully we'll

[74]

have this on computers in the next couple of years: How many papers are served and what's handled and so forth.

So, in taking the best records we could find of the activities in the county, and the potentiality of it, this is how we arrived in laying these precincts out this way.

And I think everyone of us will tell you that none of us are saying this is a perfect plan. It's the best we knew how to come up with to serve the Harris County people best.

Q. Now looking at the same copy of the exhibit, which you have before you there, it's really apparent that the one man-one vote principle was not applied.

A. No, sir, it was not.

Q. Even though it's much less in disparity of population than it was before?

A. Yeah, I would say so. When you jump from six thousand to a million and then come over here to a hundred forty six thousand to three hundred thousand.

Q. That was one issue we had raised. This is up to the Court, Commissioner, to determine whether or not when you have a voluntary redistricting, the one man-one vote rule applies.

Now the Court has never ruled on this matter. Now

[75]

keep in mind that we are talking about one mandatory, where they say, "You have got to" and the other undertaking, where we're challenging, is where you don't have to, but by virtue of some constitutional provision or state statute you voluntarily undertake it, as y'all did. You didn't have to redistrict the JP precincts. But the Commissioners Court voluntarily undertook that, regardless of what the motives may have been.

And, so, we're asking the Court that where you have the authority to undertake this voluntarily, by virtue of a state statute, then is it mandatory that the one man-one vote rule apply?

A. John, you know the encouraging thing about this whole situation, and certainly I don't want to see the County expending funds or your clients expending funds unnecessarily, but the encouraging part about this whole thing, is that we have raised some pertinent issues of how we can serve the public best.

Q. Correct.

A. And I am willing to accept whatever the Court rules. But the big part that really chaps your rear end is to have someone come in and tell you that you did it for political purposes. And I can assure you that this was

not the intent of setting this thing up, any more than we are moving computers around for political

[76]

purposes. We are just doing it, trying to get the most mileage and serving the people the best.

And first of all, I say again, that maybe instead of ten years, maybe we ought to look at this thing again in another three or four years, in an urban area, and I would be perfectly happy to accept the wisdom of the legislature or a court that lays out a plan that says, "This is the way, in our wisdom, that you should do it." I would follow it to a "T." And I wouldn't have any qualms about doing it.

The sad part about it is that a bunch of people set here a hundred years and not do anything at all and just let the public suffer.

Q. Let me ask you this: Using the standards that apply in Article 5, Section 18, I may be incorrect on the direct quotation on that section, but I believe that it states, "From time to time, for the convenience of the people, the Commissioners Court has the authority to look at the boundaries of the various JP and Constable precincts." Let's just talk about them, the JP precincts, because they are harmonious with the Constables, so to speak, because you can't have one without the other.

A. Right.

Q. Calling it JP precincts, but from time to time the

[77]

Commissioners Court, for the convenience of the people, can redistrict these precincts. Now it doesn't elaborate what requirements must be met, if any. I think there is

some case log decisions. Of course, we are challenging those. But now would you say that your primary consideration was convenience of the people or what's best for the people in your judgment? Was that the criterion that you used in casting your ballot?

A. That was my total criteria for supporting any plan and redistricting. Here again you must remember this, too, that a JP's duties are so close to the people out there, on everything from a family squabble across the fence to who picked up Johnny's bicycle. And this again is the reason that I feel that the importance of this office, that many disputes can be settled out there by some knowledgeable and well qualified JP.

And frankly, I wouldn't be opposed to having more JP's maybe than two per precinct in an urban area, if you could bring them closer to the people. And at the same time if justice is not dealt with or handled properly by that individual, he is still close enough to the people out there that they can vote him out of office if they are being mishandled by him. And I like this part of it.

[78]

And for me to sit here and tell you that I have all the answers for updating county government, and that everything we have done is just the finest thing since Motherhood, I am not going to do it.

But I can tell you again, and I want it for the record specifically, that no one in our group, that voted for this plan, did I hear say, "Let's do this because it will be politically expedient for an election or for us" or what have you. I can assure you I wouldn't have supported it if it had been along those lines. And it was just trying to start off with some system to upgrade the present system. And that was the total intent, to the best of my knowledge.

[80]

Q. 6, 7 & 5. Now then that area, about which I am asking my question, to your knowledge is an unincorporated area of the City of Houston. Would that be a fair statement?

A. I would take your word for it.

Q. Let's exclude the City of Tomball and the City of Katy?

A. All right.

Q. That area is largely unincorporated?

A. But here again, though, John, you are undoubtedly missing the point I tried to get over to you. In that total area, you talked about, there is just—there is only twenty seven thousand people totally that reside out of that, out of a million seven hundred fifty thousand. You follow me?

Q. But I am trying to relate distance to convenience. That's going to be my next question.

A. But distance for how many people, though. You are going to make it more convenient for three hundred thousand than you are for twenty three thousand?

[81]

This is a difficult thing. I am not saying that those twenty seven thousand shouldn't be served, you know, as convenient as possible, because I do want them to be. But here again, another thing, the attorney that was questioning before said that I wasn't answering him directly. But another thing we are looking at, sincerely looking at, is a regional concept of government. Not only can they go to a courthouse annex or multipurpose center for J.P.'s and Constables, but go there and pay their taxes and purchase

license plates and buy marriage licenses and so forth. And the total concept is to bring the county government from the courthouse complex to the court out to the people. And we feel that in looking at figures of fees collected and fines and what have you, that on a strictly business basis of handling the taxpayers money properly, this should be done.

[82]

Justice precincts, which we now have the maximum, I believe—

A. Right.

Q. —in Harris County. Now the applying of those three criteria, approximately sixteen hundred square miles —

A. Seventeen hundred and something.

Q. Okay.

A. Seventeen plus.

Q. It's 565 times 3.

A. I'll stand corrected then if that's it.

Q. Well, let's just use seventeen hundred even.

A. Okay.

Q. Okay, sir. But whatever the square mileage is, knowing your number of census tracts that you have, there is no reason why a figure of population and square mileage could not be reached so it would be seven within every precinct, to your knowledge? Do you know of any reason?

A. The only thing about that that would be a good reason would be the precinct you just mentioned, 5, 6 and 7, has a large—I don't know what the square mileage is, but it's—I'd say more than a third. Far more than a

third, but you only had twenty seven thousand people totally out there.

[84]

Q. I am not questioning your motives, Commissioner. So I don't want to offend you, but I want to ask a question. If Commissioner Bass stated that it was one of the considerations in voting for the redistricting of the J.P.'s and Constables to give the blacks a piece of the action, would you tell, for the purposes of the record, was that one of your motives in voting for it?

A. Well, you know this sounds like Commissioner Bass, you know, shooting from the hip with some of his statements at times. But certainly, as I said earlier, I certainly do want to consider the blacks and the Chicanos. But at the same time I want to consider the good people out in Crosby-Highlands area, when we put a second J.P. And I am not opposed to everyone having some input into it. And I'll say this: Prior to this re-

[85]

districting, the black and Chicano population of this county probably didn't have a lot to say about electing a J.P. Very few.

Q. You are not aware of any requirement of the law, are you, that says that because of a person's race he is entitled to be guaranteed a political office?

A. No, sir. And you know, John, I said earlier, and I really think it's happening across this country, when you see again the Mayor of Los Angeles, California elected where there is only fifteen percent blacks—

Q. I am in agreement with you.

A. It's changing. And for anybody to come along and tell me that Precinct 6 or Precinct 7 is a sure fire Chicano or a sure fire black, they may be more politically astute than I am, but I think it's a pipe dream. I think that day, in the urban area, is gone.

[86]

A. John, my first criteria, and this is positive proof of who is out there, my first criteria in making appointments in those areas you are talking about is did they have the credentials and then what are those. That was a law degree.

And Judge Azios and Judge Rodriguez and Judge Peavy, the court saw fit to appoint, were all attorneys.

[87]

It wasn't because he had a black face or a brown face. We were looking at the credentials the guy was carrying. So that in itself should have showed what the true motives or redistricting was.

[78]

ORDER

(Filed January 30, 1974)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RICHARD E. MOORE, J. C. BOLTON, VERNON G. DOERING, J. W. MAHAN, GENE ZABOROSKI; and JOHN HOWE BOYNTON, on His Own Behalf and on Behalf of Every Resident Citizen of the Former Justice of the Peace Precinct Nos. 5, 6, and 7 of Harris County, Texas

V.

HARRIS COUNTY COMMISSIONERS COURT, WILLIAM ELLIOTT, Individually and as County Judge of Harris County, E. A. LYONS, Individually and as a Member of the Harris County Commissioners Court, ROBERT ECKELS, Individually and as a Member of the Harris County Commissioners Court, JAMIE BRAY, Individually and as a Member of the Harris County Commissioners Court, and TOM BASS, Individually and as a Member of the Harris County Commissioners Court

CIVIL ACTION NO. 73-H-993

ORDER

This action came on for hearing before a three-judge district court composed of the Honorable Thomas G. Gee, Circuit Judge, the Honorable John V. Singleton, Jr., District Judge, and the Honorable Carl O. Bue, Jr., District

[79]

Judge, and the issues having been duly heard and decision having been duly rendered.

It is ORDERED and ADJUDGED that

I. This court has jurisdiction under Title 28, U.S.C.A. § 2281.

II. The Texas statute Article 2351½, Vernon's Ann. Civ. St., is facially unconstitutional.

III. The order of the Commissioners Court of Harris County, Texas, of June 28, 1973, complained of herein issued pursuant thereto is therefore permanently enjoined.

An opinion of this court will follow.

DONE at Houston, Texas, on this the 30th day of January, 1973.

THOMAS G. GEE
Thomas G. Gee
Circuit Judge

JOHN V. SINGLETON, JR.
John V. Singleton, Jr.
District Judge

CARL J. BUE, JR.
Carl J. Bue, Jr.
District Judge

[80]

IN THE

United States District Court

FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RICHARD E. MOORE, ET AL,
v.
HARRIS COUNTY COMMISSIONERS COURT, ET AL

No. 73-H-993

BLACKIE NEELEY
v.
HARRIS COUNTY COMMISSIONERS COURT, ET AL

No. 73-H-1033

Before GEE, Circuit Judge, SINGLETON and BUE, District Judges.

GEE, Circuit Judge:

Plaintiffs are duly elected Justices of the Peace, Constables and voters of three former Harris County precincts which have been abolished by order of defendants, the County Judge and Commissioners of Harris County, Texas. At the time of the order, and today, the terms to which the plaintiff office-holders were elected had not expired. The Commissioners acted under authority of a Texas Constitutional provision[1] permitting revision of

1. Tex. Const. Art. 5, §18.

precincts from time to time "for the convenience of the people" and Article 2351½, Texas Revised Civil Statutes. This article provides, in pertinent part, as follows:

> (c) When boundaries of justice of the peace precincts are changed, so that existing precincts are altered, new precincts are formed, or former precincts are abolished, if only one previously elected or appointed justice of the peace or constable resides within a precinct as so changed, he shall continue in office as justice or constable of that precinct for the remainder of the term to which he was elected or appointed. If more than one justice or constable resides within a precinct as so changed, or if none resides therein, the office shall become vacant and the vacancy shall be filled as other vacancies; provided, however, that in precincts having two justices, if two reside therein, both shall continue in office, and if more than two reside therein, both offices shall become vacant.

The manner in which defendants' order redrew the Harris County precinct lines resulted in the vacating of plaintiffs' offices by force of the quoted portion of the statute.

The statute is attacked on numerous grounds, most of which we need not discuss, since we conclude that its effect to end the term of some of the duly elected justices of the peace and constables of Harris County constitutes an impermissible abridgement of the franchise of those entitled to vote for them and a violation of the equal protection clause, both without the showing of any compelling state interest to be served thereby.

Defendants are local officers, functioning pursuant to statewide policies embodied in the constitutional and stat-

utory provisions cited. An injunction is sought on constitutional grounds against the effect of Article 2351½ to truncate the term of some of the plaintiffs and set at nought the vote of those who elected them to these offices. These offices are the creation of state law; the jurisdiction of the offices in question is statewide,[2] and the statute attacked is of statwide effect and impact. The constitutional issues raised are not facially insubstantial, and the complaints clearly called for the convening of a three-judge court.

We are not unmindful of the decision in *Snowden v. Hughes,* 321 U.S. 1 (1944), in which the right of a citizen to be a candidate for state office was held to be unprotected by the privileges and immunities clause of the Fourteenth Amendment, or that in dicta the court extended its holding to the right to vote for and hold such office. But we are persuaded that this case is not controlled by *Snowden.*

In the first place, on its facts *Snowden* involved a candidacy only. We treat here of a Texas state office, which has been repeatedly held by the courts of Texas to be a species of property, *e.g., State ex rel Jennett v. Owens,* 63 Tex. 261 (1885). The Fourteenth Amendment might well be seen as extending protection to an elected and qualified office-holder, but not to a mere aspirant as in *Snowden.*

In the second place, it appears that events have marched by the view taken in *Snowden* of the division of state

2. E.g. Arts. 2385, 6885, Tex. Rev. Civ. Stat. The jurisdiction of a justice of the peace is to be distinguished from the venue limitations of Art. 2390, R.C.S.

and federal responsibilities.[3] More recent Supreme Court decisions have sapped the force of *Snowden's* vision of the federal structure. The "privileges and immunities" clause of the Fourteenth Amendment has become irrelevant in considering protection of the right to run and vote for state office. Modern concepts of equal protection have assumed that burden. *Bullock v. Carter,* 405 U.S. 134, 31 L.Ed.2d 92 (1972); *White v. Regester,* ____ U.S. ____, 37 L.Ed.2d 314 (1973); *Harper v. Virginia Bd. of Elections,* 383 U.S. 663, 16 L.Ed.2d 169 (1966); cf. *Oregon v. Mitchell,* 400 U.S. 112, 27 L.Ed.2d 272 (1970).

Insofar as Art. 2351½ operates to truncate the term of a duly elected public official upon the circumstance that a mere convenience redistricting places him in a district with others, it invidiously and irrationally discriminates between him and others not so affected and between the effect of the votes of those who voted or were entitled to vote in his election and voters whose franchise was not so bobbed. No compelling interest was here served by such discrimination.[4] Certainly it was not necessary to effect redistricting in mid-term or, if that were thought pressing, it was not compelling that the office be declared vacant as a result. Indeed, the analogous

3. See *Mancuso v. Taft,* 476 F.2d 187, 196-97 n. 14 (1st Cir. 1973).

4. Defendants' only contention which approaches advancing such an interest for *redistricting* is that the old precincts were egregiously disproportionate in population. This is true, but the new districts were clearly not drawn with any ideal of population equality foremost in mind; the order establishing them itself recites that one contains almost two and one-half times as many people as another. Nor would population equalization, if seen as a compelling reason for redistricting and faithfully served in drawing the new precincts, bear any necessary relation to vacating these offices, a different consideration entirely.

section pertaining to county commissioners, Art. 2351½(b), expressly provides that the term of office of a county commissioner is not to be affected by redistricting, even though its effect may be to place his residence outside the precinct for which he was elected.

The duly elected justices of the peace and constables, plaintiffs here, are entitled to serve the terms to which they were elected. Insofar only as Article 2351½, Texas Revised Civil Statutes mandates otherwise, it is unconstitutional. Insofar only as defendants' order of January 30, 1973, undertakes to appoint other persons to plaintiffs' offices, and to prevent plaintiffs from carrying out the duties and receiving the emoluments of their offices during the term to which they were elected, it is likewise invalid.

THOMAS GIBBS GEE
United States Circuit Judge

JOHN V. SINGLETON, JR.
United States District Judge

CARL O. BUE, JR.
United States District Judge